

## TERMS AND CONDITIONS OF SALE

Unless otherwise specified in writing by Seller, these Terms and Conditions of Sale govern the Contract.

### 1. Definitions:

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

**Contract** means a contract for sale by Seller to the Buyer of the Products incorporating these terms and conditions and such other documents as may, from time to time, be agreed expressly in writing to form part of the Contract.

**Consumer Contract** means a contract for the acquisition of products or services as a 'consumer' as that term is defined in the Australian Consumer Law.

**Buyer** means Seller's customer, the person or legal entity identified in Seller's Quotation or Invoice who orders Products from Seller.

**Seller** means the seller of the Products whose details are set out in the Seller's Invoice.

**Invoice** means formal, authorized Product invoice provided by Seller to Buyer.

**Order Confirmation** means formal acknowledgement of Product ordered by the Buyer, sent by Seller.

**Price** means the total sum of the Product prices as per Seller Quotation and Order Confirmation and the latter will have precedence.

**Products** means the products and services as described in the Order Confirmation.

**Quotation** means formal, authorized Product quotation provided by Seller to Buyer.

**Terms** means these terms and conditions of sale.

**2. Formation of Contract:** These Terms apply to the sale of any Products made, supplied or rendered by Seller. No Contract comes into existence until the Buyer's order has been accepted by Seller in the form of an Order Confirmation and such acceptance has been received by the Buyer. The Products sold and/or rendered are subject to these Terms to the exclusion of any other terms and conditions stipulated or referred to by the Buyer. Neither Seller's acknowledgement of an order nor its failure to object to conflicting, different, or additional terms and conditions in a purchase order will be deemed an acceptance of such terms and conditions or a waiver of the provisions.

**3. Delivery:** Products will be delivered EX-WORKS Seller's facility (EXW Incoterms 2010). Seller will use reasonable endeavours to deliver the Products within the timeframes specified in the Contract, and reserves the right to deliver early. Seller is not liable to the Buyer for any loss or damage caused to the Buyer by any delay in the delivery of, or any failure to deliver, the Products or any part of the Products and the Buyer will not be entitled to cancel the Contract as a result of any such delay or failure. If the dispatch of Products is delayed for whatever reason, but not at the request of Seller, then the Products will be stored at the expense and risk of the Buyer. Cancellation or rescheduling of the delivery by Buyer may be subject to additional charges by Seller. Buyer agrees to abide by all Australian and US Government laws and export regulations, including without limitation those applicable to re-export, and when required by such laws or regulations, Buyer shall apply for the necessary and appropriate export licenses. Seller shall provide reasonable support and

documentation if required for such export license application.

**4. Risk and Title:** All responsibility of Seller, but not limited to risk of loss of Products sold hereunder, will pass to the Buyer when the Products are delivered. Legal title in the Products will pass to the Buyer when full payment is received by Seller for the Products and any other products sold to the Buyer by Seller. In the absence of specific instructions, Seller will select the carrier to whom delivery will be made for shipment to Buyer. All claims to the carrier for Products damaged or lost in transit shall be made by the Buyer. Title to any Product not fully paid for at the time of delivery to Buyer shall be retained by and remain in Seller until Price is fully paid and if the Price is to be paid on an instalment basis, Buyer will prior to the time of delivery execute a note, security agreement and financing statement for such purchase price, all upon forms customarily used by Seller in similar transactions.

**5. Packing:** Except as otherwise specified, Seller will use commercial standards to pack, package and mark Products for shipping to Buyer. Products returned to Seller's facility must be packaged in the original shipping container or equivalent. Seller reserves the right to charge Buyer the cost of such proper shipping container for return shipment should Buyer fail to comply with the aforementioned shipping requirement. Seller reserves the right to adjust the quoted price for any unique or special requirements requested by the Buyer.

**6. Inspection and Acceptance:** Final testing, inspection and acceptance of Products will take place at Seller's facility, in accordance with Seller's standard practices.

**7. Price:** Prices are specified in the Contract and, unless the Contract states otherwise, are: (i) in US dollars; and (ii) exclusive of all taxes, levies, duties, taxes, insurance, packaging and delivery costs. Buyer agrees to pay to Seller, in addition to the Prices stated, the amount of any such taxes, domestic or foreign, which may be imposed upon or payable by Seller. Unless otherwise specified, any quoted Prices are valid for thirty days from date of Quotation. Buyer may at any time request changes to the Contract within the general scope of work called for. If such changes cause an increase or decrease in the price of the items, Buyer shall be notified to this effect, and Seller shall not be obligated to proceed with such changes until it receives a written change order, and agrees in writing to accept such change. Seller shall also be entitled to an extension of the delivery schedule as a result of such change(s).

**8. Payment:** The Buyer must pay the purchase price within 30 days from date of invoice. Seller reserves the right to require payment in advance of shipment or to ship C.O.D. Unless the Contract states otherwise, all payments must be made in U.S. dollars. In the event payment is not made when due, in addition to all other rights under this Contract or at law, Seller may at its option: (i) charge interest on the overdue amount at a rate of 2% per month or the maximum allowable by law at the time of and after the default and calculated from the due date of the account until the actual date of full and final payment and payment will be credited first against interest accrued; (ii) suspend performance hereunder until the overdue amount (including interest, if any) is paid; (iii) demand payment in advance for any undelivered Products before

proceeding with manufacturing, rendering or making any further delivery of Products under these Terms; (iv) defer or cancel any outstanding balance of an order or terminate the Contract; (v) repossess the Products for which payment has not been made; (vi) recover from the Buyer all legal and other costs incurred by Seller arising from the Buyer's default in payment and the collection of any overdue monies; and (vii) combine any of the above rights and remedies as may be permitted by law. The Buyer must make all payments due under these Terms without any set-off, counterclaim, deduction or condition unless the Seller otherwise agrees in writing.

**9. Limitation of Liability:** Seller shall not be liable for any business interruption, loss of profit, revenue, materials, anticipated savings, data, contract, goodwill or the like (whether direct or indirect), or for any form of incidental or consequential damage of any kind. Notwithstanding anything else in the Contract, and to the extent permissible by law, the Seller's aggregate liability arising out of or relating to the Contract, whether under the law of contract, tort, statute or otherwise, shall be limited to the price paid to Seller by the Buyer for the specific product or service giving rise to the claim. Buyer shall defend, indemnify, and hold harmless Seller, its parents, subsidiaries and affiliates, and their respective directors, officers and employees and representatives, from and against any and all claims, suits, losses, obligations, causes of action, damages, and expenses (including attorney's fees) relating to or arising out of any use of the Product by Buyer or its customers.

**10. Intellectual Property Rights:** All rights and interest to the inventions, information, technical data or drawings, copyrights rights, patent rights, trademark rights, know-how, trade secrets, related intellectual property, intangible and proprietary rights throughout the world, relating to the Product, including any related software, or disclosed to Buyer in connection with any order or proposal, are the exclusive property of Seller ("IPR"). Buyer shall not (a) Decompile, reverse engineer, disassemble, trace or otherwise analyze the Product or software, their content, operation, or functionality; (b) Modify, adapt, or translate the Product or software, nor create derivative works based on the Product or software; or (c) Disclose any proprietary information regarding the IPR to any other persons or companies without Seller's prior written approval. Software delivered hereunder, either embedded in the Product or specifically designed for use in or with such Product, is copyrighted by Seller and shall remain the sole and exclusive property of Seller. Seller grants the Buyer a limited, perpetual, worldwide, non-exclusive license to use the software only in or with the Product. The Buyer shall not copy, modify, or disassemble the software, or permit others to do so. Buyer shall not transfer the license granted hereby or possession of the software except as part of or with the Product, such transfer being subject to the restrictions contained herein. Seller may terminate this license upon written notice for violation of any of the terms of the foregoing license.

**11. Trademark:** The Buyer must not alter, remove, or in any way tamper with, or otherwise do anything adverse to, any indicia of manufacturing or service origin (including but not limited to serial numbers and trademarks) attached to or placed on the Products by Seller.

## 12. Warranty

(a) The Competition and Consumer Act 2010 (Cth) and the Australian Consumer Law may guarantee certain conditions, warranties and undertakings in relation to the Products. To the extent they apply, these guarantees cannot be modified nor excluded by contract, and these Terms of Sale do not purport to modify or exclude any conditions, warranties, guarantees and undertakings under the Australian Consumer Law. Except as expressly set out in these Terms of Sale and the Australian Consumer Law, the Seller makes no warranty, representation or other statement in respect of the Products, their quality or their fitness for any purpose, except as stated expressly in these Terms of Sale, or as may otherwise be required by law.

(b) If the Buyer purchases Products as a Consumer as defined in the Australian Consumer Law, then the Australian Consumer Law contains certain guarantees in relation to the Products that cannot be excluded. In these circumstances, the Buyer may be entitled to an identical replacement (or one of similar value if reasonably available), a refund or compensation for drop in value to the Products, at the Buyer's option. In the case of a minor failure, the Buyer may have the Products repaired, replaced or obtain a refund at the Seller's option.

(c) If and only if the Buyer is not a Consumer as defined in the Australian Consumer Law, the Seller warrants that the Products, whether manufactured by the Seller or its suppliers, and supplied by the Seller, shall, for a period of twelve (12) months from the date of delivery of the Products from the Seller's facility, be free of faulty workmanship, materials or design.

(d) The warranties provided in paragraph (c) of this clause shall be effective, and impose liability on the Seller to give effect to such warranty, only if:

i. The Seller is provided with written notice of the circumstances giving rise to the claim arising within thirty (30) days of the occurrence of such circumstances;

ii. The Seller is permitted to inspect Products before they are repaired or replaced;

iii. The Buyer returns the Products or components to the Seller's facility, at the Buyer's expense; and

iv. The Seller is satisfied, by its own examination of the Products, that (A) Previous maintenance or repair, installation, handling, transportation, storage, operation and/or use of the Product was performed in compliance with Seller's instructions and (B) The Product has not been altered, modified, or repaired other than by Seller, or a distributor or service and repair center that has been authorized by Seller. To the extent permitted by law, the Seller's liability for any loss, injury or damage, shall be limited to making good, by replacement or repair, at the Seller's option, and at the Buyer's expense in relation to costs over and above the direct costs of replacing or repairing the Products or the component parts of the Products at the Seller's facility, any defects which appear under proper use.

(e) If and only if the Buyer is not a "Consumer" as defined in the Australian Consumer Law, the Seller warrants that any repairs that the Seller undertakes to the Products, shall, for a period of twelve months from the date of completion of the repair, be free of faulty workmanship, materials or design for a further period of twelve months, but only in respect of the components that are the subject of the repair.

(f) Any repairs, alterations or other work carried out to the Products by a person other than an authorized representative of the Seller

shall invalidate the warranty in paragraphs (c) and (e) of this clause.

(g) The Seller makes no representation and provides no warranty in respect of any standard or custom software and firmware, supplied in connection with the Products, (including that any such software shall be uninterrupted or free of errors, or that the functions contained therein shall meet or satisfy the Buyer's intended use or requirements), except as stated expressly in these Terms, or as may otherwise be required by law. No other warranties, expressed, implied, or statutory, including any implied warranty of merchantability or of fitness for a particular purpose shall be applicable to any Product sold or software delivered hereunder, and the foregoing shall constitute the Buyer's sole right and remedy under these Terms.

## 13. Products returned for repair (not under Warranty)

- Where Products are not under an express warranty or subject to a Consumer Guarantee and are returned for repair, overhaul or service, the Seller may charge a fee for inspection and preparation of a repair quotation and this fee shall be payable in the event that the Buyer does not proceed with the repair. Any repairs that the Seller undertakes under this clause 13 are guaranteed for a period of ninety (90) days from date of completion and only in respect of any replacement components that were used in the repair. Despite anything to the contrary in this clause 13, the Seller is not under any obligation to repair any Products which are not under warranty.

## 14. Not Used.

**15. Termination:** Seller may terminate this Contract immediately by giving notice to the Buyer if the Buyer: (i) commits a breach of this Contract including, without limitation, the payment of money, and fails to remedy such breach within 14 days of notification by Seller to do so; or (ii) has a receiver, receiver and manager, trustee, administrator, liquidator or other similar official appointed, or steps are taken for such appointment, whether voluntarily or otherwise, over the Buyer's assets or undertakings, or if the Buyer is unable to pay its debts if and when due. The sections "Intellectual Property Rights", "Warranty", "Limitation of Liability", "Termination", "Confidentiality" and "Applicable Law" will survive termination of this Contract.

**16. Entire Agreement and Variation:** These Terms constitute the entire agreement between the parties with respect to a Contract and supersede any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party. These Terms may only be amended in writing signed by both parties.

**17. Confidentiality:** These Terms do not supersede any confidentiality agreement executed by the Buyer and Seller relating to this Contract. In the absence of such an agreement, the Buyer may only use Seller's confidential information in the normal operation of the Products. Further, the Buyer may disclose Seller's confidential information only to its personnel who have a need to know and must keep Seller's confidential information confidential, safe and secure. Buyer shall not disclose to any third party these terms and conditions and the other terms of Seller's proposal without the prior express written consent from Seller.

**18. Force Majeure:** Seller will not have any liability under or be deemed to be in breach of these Terms for any delays or failures in performance due to causes beyond its control and without its fault or negligence, including but not limited to inability to obtain material, labor, manufacturing or support facilities, acts of God, or of the public enemy, any preference, priority or allocation order issued by the Government, changes in applicable law or any other act of Government, fires, floods, unusually severe weather, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of Seller's suppliers ("Force Majeure Event"). In the event of such delay, Seller's performance date(s) will be extended for such length of time as may be reasonably necessary to compensate for the Force Majeure Event. In the event of such delay, delivery dates shall be extended accordingly for a period equal to the time lost by reason of such delay. Seller shall use its reasonable efforts to remove the cause of delay and resume work as soon as possible and to mitigate delivery schedule delay. In no event shall Seller be liable for any damages. Seller reserves the right to provide, at no change in price, a substitute product provided however that such substitute product maintains the form, fit and function of the original Product.

**19. Assignment:** The Buyer must not assign or otherwise transfer any Contract or any of its rights or obligations under these Terms without the prior written consent of Seller. Any such unauthorized assignment will be deemed null and void.

**20. Waiver:** Waiver of any right arising under these Terms must be in writing and signed by the party granting the waiver.

**21. Severability:** If part or all of any clause of these Terms is invalid or unenforceable in any jurisdiction then it will be read down to the extent necessary to ensure that it is not invalid or unenforceable, but if that is not possible, it will be severed to the extent of the invalidity or unenforceability, without effecting the validity or enforceability of that provision in any other jurisdiction.

**22. Applicable Law:** These Terms shall be governed by and construed in accordance with the laws of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of the courts and tribunals of New South Wales, Australia. Nothing in this clause is intended to undermine the jurisdiction of the Federal Court of Australia or the Federal Circuit Court of Australia.