

The following general terms and conditions of sale ("Terms") form part of the Contract. If the Company has provided a written quotation, the terms of that written quotation prevail over these Terms to the extent of any inconsistencies.

## 1. Definitions

1.1 In the Contract, unless otherwise provided, the following words have the following meanings:

- (a) "ACL" means the Australian Consumer Law Schedule to the Competition and Consumer Act.
- (b) "Company" means the company supplying Goods or Installation Services to the Purchaser.
- (c) "consumer" is as defined in the ACL and in determining if the Purchaser is a consumer, the determination is made if the Purchaser is a consumer under the Contract.
- (d) "Contract" means the agreement for the provision of Goods or Installation Services by the Company to the Purchaser comprising of the page headed "Contract of Sale", the Terms and the Schedule.
- (e) "Force Majeure Occurrence" means one or more of the following: strikes, unforeseen breakdown of machinery, suspension of electricity or other relevant power supply, riots, war, robbery, civil commotion, adverse non foreseeable weather conditions, disaster caused by fire and/or water, action of government or port authority, delay of vessel, railroad embargoes, inability to obtain transportation facilities, failure of an original equipment manufacturer to supply the Goods or any part thereof in a timely fashion or at all.
- (f) "Goods" means goods supplied by the Company to the Purchaser.
- (g) "GST" means GST within the meaning of the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (h) "Installation Services" means the levelling and positioning of the Goods, removal of travel clamps, aligning of any auxiliary equipment, connection of all necessary air and power supplies at the machine, and checking and adjusting where necessary all lubricant levels but DOES NOT include the provision of a level site of sufficient strength capability for the Goods, the provision of which is the sole responsibility of the Purchaser.
- (i) "PPSA" means the *Personal Property Securities Act 2009* (Cth) and its associated Regulations as amended.
- (j) "Proprietary Information" means any and all information relating to the Goods or their Installation including designs, drawings, instruction booklets, specifications, circuit drawings, componentry, trademarks and patents and any and all proprietary information, intellectual property and copyright in such proprietary information.
- (k) "Purchaser" means the person, jointly or severally if more than one, acquiring Goods or Installation Services from the Company.

## 2. Basis of Agreement

2.1 Unless otherwise agreed by the Company in writing, the Terms apply exclusively to every Contract and cannot be varied or replaced by any other terms.

- 2.2 The Company in its absolute discretion may refuse to accept any offer.
- 2.3 The Company may vary or amend these Terms by written notice to the Purchaser at any time. Any variations or amendments will apply to orders placed after the notice date.

**3. Payment and charges**

- 3.1 Unless otherwise advised in writing by the Company, the Purchaser must pay the Purchase Price (including any applicable GST) as set out in the Schedule:
  - (a) by payment of a deposit in the amount shown in the schedule, in a manner acceptable to the Company; and
  - (b) by the provision of an irrevocable Letter of Credit in a form acceptable to the Company for the balance of the Purchase Price (including any applicable GST), within 7 days of the date of the Contract.
- 3.2 The Company reserves the right to charge the Purchaser for any costs, damages, expenses or additional sum whatsoever that the Company may incur as a result of:
  - (a) Vehicle or wagon detention of the Goods (to the extent that the same is not caused or contributed to by the Company);
  - (b) Demurrage on ships as a consequence of any act or omission of the Purchaser;
  - (c) Any increase in duties, taxes, freight, insurance or other charges or expenses from the date of the Contract to the date of delivery; and
  - (d) Any fluctuation in foreign exchange currency rates affecting the cost to the Company of obtaining the Goods or delivering the Goods to the Purchaser. The Purchaser acknowledges that any sum charged by the Company in respect of such fluctuation may be based upon the entire Purchase Price, irrespective of whether a deposit has been paid by the Purchaser ("Additional Amounts").
- 3.3 Additional Amounts must be paid by the Purchaser in the manner and within the time specified by the Company.
- 3.4 Any amounts unpaid by the Purchaser for more than fourteen (14) days from the date for payment will bear interest at the rate of 2.5% above the National Australia Bank's variable benchmark lending rate as from time to time applicable during the period that the amounts remain unpaid.
- 3.5 The extension of credit to the Purchaser by the Company will be at the sole discretion of the Company.
- 3.6 The Purchaser:
  - (a) agrees that the Company is entitled to use the services of a credit agency from time to time to obtain information concerning the Purchaser (and, where the Purchaser is a company, its Directors) in order to assess the Purchaser's credit worthiness; and
  - (b) hereby authorises the release to the Company of any such information requested by the Company.
- 3.7 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.
- 3.8 Payment terms may be revoked or amended at the Company's sole discretion immediately upon giving the Purchaser written notice.
- 3.9 The time for payment is of the essence.

**4. Specifications of goods**

- 4.1 Unless otherwise agreed in writing, any Goods supplied by the Company to the Purchaser will be deemed to operate satisfactorily if the Goods operate in accordance with the relevant specifications of the manufacturer of the Goods.
- 4.2 The Purchaser acknowledges that the ability of the Goods to operate satisfactorily in accordance with their specifications is dependant upon the proper layout and maintenance of the Goods and all parts thereof, proper material control and other factors:
- (a) for which the Purchaser is responsible; and
  - (b) which are beyond the control of the Company.
- 4.3 Unless otherwise agreed in writing, the Goods will be supplied to the manufacturer's standard finish and dimensions. Unless required under the ACL, neither the Company nor the manufacturer accepts any responsibility or liability whatsoever should the colour, designs or dimensions of the Goods vary from the colour, designs or dimensions contained in any product catalogue, brochure or other promotional or information document in respect of the Goods, which are a guide only.

**5. Delivery and risk**

- 5.1 Unless otherwise agreed in writing:
- (a) the Company will arrange for transport of the Goods to the Purchaser's specified delivery point;
  - (b) the Company is entitled to charge the fee for such transport set out in the schedule as the "delivery fee";
  - (c) the Purchaser must pay the delivery fee upon delivery of the Goods;
  - (d) the Purchaser is responsible for unloading the Goods from the transport vehicle;
  - (e) the Purchaser indemnifies the Company against any loss or damage suffered by the Company, its sub-contractors or employees as a direct result of delivery, except where the Purchaser is a consumer and the Company has not used due care and skill; and
  - (f) if no delivery point has been specified by the Purchaser, the Purchaser must collect the Goods from the Company's premises within 7 days of the Company notifying the Purchaser that the Goods are ready for collection.
- 5.2 Subject to clause 5.5(b) and 5.6(b), delivery of the Goods is deemed to occur:
- (a) in the case of transport to the Purchaser's specified delivery point, upon the commencement of the unloading of the Goods from the transport vehicle;
  - (b) in the case of collection by the Purchaser from the Company's premises, upon the commencement of the loading of the Goods onto the Purchaser's vehicle.
- 5.3 Subject to clause 5.7, the risk in the Goods and all insurance responsibility for theft, damage or otherwise will pass to the Purchaser immediately on delivery of the Goods pursuant to clause 5.2.
- 5.4 Unless otherwise agreed in writing, the Company is entitled to deliver the Goods in one or more lots and may invoice the Purchaser for the Goods and Installation Services provided.

- 5.5 If the Company notifies the Purchaser that the Goods are ready for transport or collection and the Purchaser requests the Company to hold the Goods:
- (a) the Company will hold the Goods;
  - (b) delivery shall be deemed to have occurred and the Goods will be at the Purchaser's risk from the time of the Purchaser's request; and
  - (c) the Company is entitled to charge storage fees in respect of the Goods so stored.
- 5.6 Where clause 5.1(f) applies and the Purchaser does not collect the Goods within 7 days of notification by the Company that the Goods are ready for collection:
- (a) the Company will hold the Goods;
  - (b) delivery shall be deemed to have occurred and the Goods will be at the Purchaser's risk from the expiry of the said 7 days; and
  - (c) the Company is entitled to charge storage fees in respect of the Goods so stored.
- 5.7 If the company has agreed in writing to provide Installation Services, then:
- (a) the Company will arrange for the Installation Services;
  - (b) the Company is entitled to charge a fee for the Installation Services;
  - (c) the Purchaser must pay the fee referred to in paragraph (b) upon completion of the Installation Services;
  - (d) the risk in the Goods passes to the Purchaser upon completion of the Installation Services.
- 5.8 The Purchaser assumes all risk and liability for loss, damage or injury to persons or to property of the Purchaser, or third parties arising out of the use, installation or possession of any of the Goods sold by the Company, unless recoverable from the Company on the failure of any statutory guarantee under the ACL.

## **6. Time for delivery**

- 6.1 Clauses 6.2 to 6.4 will apply in the event that a date for delivery of the Goods ("the Anticipated Date") is:
- (a) specified in the schedule hereto; and
  - (b) the Purchaser has:
    - (i) complied with all its financial obligations under the Contract; and
    - (ii) provided to the Company in a form acceptable to the Company all technical and other information necessary to enable the Company to complete the order of the Purchaser.

Otherwise:

- (c) the Company is deemed to have made no representation to the Purchaser in connection with the date or time of delivery of the Goods;
- (d) time for delivery of the Goods is not of the essence;
- (e) unless required under the ACL, the reference in clause 7.1 to the Anticipated Date is deemed to be a reference to the date 2 months after the date of the Contract;
- (f) the Company will not be liable to any claims by the Purchaser or for any loss, damage or expense suffered or incurred by the Purchaser or any third party including

- consequential loss or damage whatsoever or howsoever arising in connection with:
- (i) the date of delivery of the Goods; or
  - (ii) any failure to deliver the Goods; and
- (g) save as provided by clause 7.1, the date of delivery of the Goods will not:
- (i) relieve the Purchaser of its obligation to pay the Purchase Price; or
  - (ii) permit the Purchaser to rescind the Contract and/or reject the Goods.
- 6.2 In the event of any delay or possible delay arising from any circumstances beyond the reasonable control of the Company, including without limitation a Force Majeure Occurrence, the Company may extend the Anticipated Date without consultation with the Purchaser. Where such an extension occurs, the Company will notify the Purchaser of the extension as soon thereafter as is reasonably practicable.
- 6.3 In the event of any delay or possible delay in delivery, or failure or possible failure to deliver, arising from any circumstances beyond the reasonable control of the Company, including without limitation a Force Majeure Occurrence:
- (a) the Company will not be liable to any claims by the Purchaser or for any loss, damage or expense suffered or incurred by the Purchaser including consequential loss or damage whatsoever or howsoever arising out of that delay or failure; and
  - (b) save as provided by clause 7.1, the delay or failure will not:
    - (i) relieve the Purchaser of its obligation to pay the Purchase Price; or
    - (ii) permit the Purchaser to rescind the Contract and/or reject the Goods.
- 6.4 In the event of any delay or possible delay in delivery, or failure or possible failure to deliver, to which clause 6.3 does not apply:
- (a) the liability of the Company in respect of that delay or failure will:
    - (i) be limited to a sum equal to 0.5% of the Purchase Price (excluding GST) for each week by which delivery exceeds the Anticipated Date (as extended, if applicable); and
    - (ii) not in any circumstances exceed 3.0% of the Purchase Price (excluding GST); and
  - (b) save as provided by clause 7.1, the delay or failure will not:
    - (i) relieve the Purchaser of its obligation to pay the Purchase Price; or
    - (ii) permit the Purchaser to rescind the Contract and/or reject the Goods; and
  - (c) save as provided by clause 6.4(a), the Company will not be liable to any claims by the Purchaser or for any loss, damage or expense suffered or incurred by the Purchaser including consequential loss or damage whatsoever or howsoever arising out of that delay or failure.
- 6.5 If the Company cannot complete the Installation Services by the Anticipated Delivery Date, it will complete Installation Services within a reasonable time.

**7. Cancellation and Non-delivery**

- 7.1 If the Company is unable to deliver or provide the Goods or Installation Services, then it may cancel the Purchaser's order (even if it has been accepted) by written notice to the Purchaser.
- 7.2 Subject to clause 7.3, no purported cancellation or suspension of an order or any part of it by the Purchaser is binding on the Company once the order has been accepted.
- 7.3 In the event that the Company has not delivered the Goods to the Purchaser prior to the expiration of six months from the Anticipated Date (as extended, if applicable):
- (a) either the Company or the Purchaser will thereupon be at liberty to give notice in writing to the other party of the termination of the Contract;
  - (b) upon the giving of such notice, the Contract will thereupon be at an end; and
  - (c) neither party will be subject to any claim whatsoever in connection with the giving of such notice, save as provided by clause 7.4.
- 7.4 Upon the termination of the Contract pursuant to clause 7.1 or 7.3, all monies paid by the Purchaser to the Company in respect of the Goods must be refunded to the Purchaser without deduction.
- 7.5 Upon the termination of the Contract pursuant to this clause, each party hereby releases and forever discharges the other from all obligations and liabilities of whatsoever nature or howsoever arising out of the Contract.

**8. Passing of risk and retention of title**

- 8.1 Notwithstanding that the risk in the Goods passes as provided by clause 5, until the Company receives full payment in cleared funds for all Goods and Installation Services supplied by it to the Purchaser, as well as all other amounts owing to the Company by the Purchaser:
- (a) the title and property in all Goods remains vested in the Company and does not pass to the Purchaser;
  - (b) the Purchaser must store the Goods so that they are clearly identifiable as the property of the Company;
  - (c) the Purchaser must keep the Goods insured against loss or damage for their full replacement value, noting the interest of the Company on the insurance policy;
  - (d) upon delivery of the Goods, or, if the Company has agreed to provide Installation Services, upon completion of the Installation Services, the Purchaser may sell or deal in the ordinary course of business with the Goods and may for the purpose of such sale or dealing part with possession thereof, subject to paragraph (e);
  - (e) in the event that the Purchaser resells the Goods or sells goods manufactured using the Goods, the Purchaser:
    - (i) holds on trust such part of the proceeds of any such sale received by the Purchaser as represents the unpaid balance of the Purchase Price of the Goods resold or used in the manufacture of goods sold;
    - (ii) agrees to accept this appointment as bailee and fiduciary;
    - (iii) must hold the proceeds in a separate identifiable account as the beneficial property of the Company however failure to do so will not affect the

- Purchaser's obligation to deal with the proceeds as trustee; and
- (iv) must pay such amount to the Company upon request;
  - (f) where the Purchaser processes the Goods or incorporates them in or with any other product, the new product must be separately stored or marked in a manner which makes such new product readily identifiable as the Goods of the Company;
  - (g) the Company may without notice enter:
    - (i) the premises of the Purchaser;
    - (ii) the premises of any associated or related company of the Purchaser where the Goods are located;
    - (iii) the premises of any agent of the Purchaser where the Goods are located; without liability for trespass or any resulting damage and retake possession of the Goods;
    - (iv) the Purchaser irrevocably licenses the Company to enter such premises referred to in paragraph (g) (i), (ii) and (iii) and also indemnifies the Company from and against all costs, claims, demands or actions by any party arising from such action, and
  - (h) the Company may keep or resell any Goods repossessed pursuant to paragraph (g).
- 8.2 The provisions of clause 8.1 do not affect the entitlement of the Company to maintain an action against the Purchaser for the Purchase Price and any other sum payable by the Purchaser under the Contract.

## **9. Personal Property Securities Act**

- 9.1 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.
- 9.2 For the purposes of the PPSA:
- (a) terms used in clause 9 that are defined in the PPSA have the same meaning as in the PPSA;
  - (b) these Terms are a security agreement and the Company has a Purchase Money Security Interest in all present and future goods supplied by the Company to the Purchaser and the proceeds of the goods;
  - (c) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Purchaser at any particular time; and
  - (d) the Purchaser must do whatever is necessary in order to give a valid security interest over the goods which is able to be registered by the Company on the Personal Property Securities Register.
- 9.3 The security interest arising under this clause 9 attaches to the goods when the goods are collected or dispatched from the Company's premises and not at any later time.
- 9.4 Where permitted by the PPSA, the Purchaser waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.
- 9.5 The Company and the Purchaser agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms.

- 9.6 To the extent permitted by the PPSA, the Purchaser agrees that:
- (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Purchaser or which place obligations on the Company will apply only to the extent that they are mandatory or the Company agrees to their application in writing; and
  - (b) where the Company has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 9.7 The Purchaser must immediately upon the Company's request:
- (a) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and
  - (b) procure from any person considered by the Company to be relevant to its security position such agreements and waivers (including as equivalent to those above) as the Company may at any time require.
- 9.8 The Company may allocate amounts received from the Purchaser in any manner the Company determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods supplied by the Company.
- 9.9 For the purposes of section 275(6) of the PPSA, the parties agree and undertake that these Terms and any information pertaining to the sale of goods and details of the goods shall be kept confidential at all times. Neither party may disclose any information pertaining to these Terms or the sale of the goods, except as otherwise required by law or that is already in the public domain.

## **10. Claims and returns**

- 10.1 The Purchaser must inspect the Goods immediately upon delivery and, if the Goods are damaged or not otherwise in conformity with the Contract, the Purchaser must give written notice to the Company of the details thereof within seven (7) days of the date of delivery.
- 10.2 Subject to clause 10.8, no claims for damage or non-compliance with the specifications of the Contract by the Purchaser must be recognised where notice has not been given in accordance with clause 10.1.
- 10.3 Where Goods are the subject of a notice under clause 10.1:
- (a) the Purchaser must leave the Goods in the state and condition in which they were delivered until such time as the Company or its duly authorised agent has inspected the Goods;
  - (b) such inspection must be carried out within a reasonable time after notification by the Purchaser; and
  - (c) if paragraph (a) is not complied with, the Purchaser is to have accepted the Goods and the Company is entitled to the Purchase Price.
- 10.4 After inspection has taken place as provided by clause 10.3:
- (a) if the Company reasonably determines that:
    - (i) the Goods are not damaged; or
    - (ii) the Goods were damaged by the Purchaser or the Purchaser failed to take reasonable steps to prevent the Goods from becoming damaged; and
    - (iii) the Goods are otherwise in conformity with the Contract, the Purchaser is deemed to have accepted the Goods and the Company is entitled to the Purchase Price;

- (b) if the Company reasonably determines that:
    - (i) the Goods are damaged; and
    - (ii) the Goods were not damaged by the Purchaser and the Purchaser did not fail to take reasonable steps to prevent the Goods from becoming damaged; or
    - (iii) the Goods are otherwise not in conformity with the Contract, then the Purchaser is entitled to any one or more, at the option of the Company, of:
      - (A) the replacement of the Goods or the supply of equivalent Goods;
      - (B) the repair of the Goods;
      - (C) the payment of the cost of replacing the Goods or acquiring equivalent goods;
      - (D) the payment of the cost of having the Goods repaired.
- 10.5 Save where notice has been given in accordance with clause 10.1, acceptance of the Goods is deemed for all purposes to have taken place:
- (a) when the Purchaser intimates to the Company that it has accepted the Goods;
  - (b) when the Purchaser, after delivery of the Goods, does any act in relation to them which is inconsistent with the Company's ownership of the Goods; or
  - (c) upon the expiry of seven days from the date of delivery, whichever first occurs.
- 10.6 Save where otherwise provided in the Contract and other than in relation to defective Goods which the Company is obliged to accept for return under the ACL:
- (a) no Goods will be accepted for return by the Company unless agreed in writing by the Company prior to such return and then only upon conditions acceptable to the Company and at the Purchaser's entire risk as to loss or damage; and
  - (b) the Purchaser acknowledges and confirms that, subject to clause 10.8, the Company is under no obligation to accept the return of any Goods, and has sole and absolute discretion in relation thereto.
- 10.7 Where the Company agrees to accept Goods, other than defective goods that the Company is obliged to accept under the ACL, for return in accordance with clause 10.6, the Company's then current restocking charge, as varied from time to time, will be charged to the Purchaser and shall be immediately payable.
- 10.8 If the Purchaser is a consumer, nothing in this clause 10 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.

## 11. Warranties and representations

- 11.1 Our Goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 11.2 The benefits of this warranty are in addition to any rights and remedies imposed by Australian State and Federal legislation that cannot be excluded. Nothing in this warranty is to be interpreted as excluding, restricting or modifying any State or Federal legislation

- applicable to the supply of goods and services which cannot be excluded, restricted or modified.
- 11.3 Subject to clause 11.9, the Company warrants to the Purchaser that if, after acceptance of the Goods, any part of the Goods proves to be defective in workmanship or material:
- (a) within 12 months from the date of commissioning of the Goods; but
  - (b) not later than 15 months from the date of delivery of the Goods,
- the Company will replace or repair the Goods free of charge.
- 11.4 The Company reserves the right to replace defective parts of the Goods with parts and components of similar quality, grade and composition where an identical part or component is not available.
- 11.5 Goods presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the Goods.
- 11.6 If a fault covered by warranty occurs, the Purchaser must contact the Company at the address below.
- 11.7 Any warranty claim must be accompanied by proof of purchase and full details of the alleged defect.
- 11.8 The Purchaser must make the Goods available to the Company for inspection and testing. If such inspection and testing finds no defect in the Goods, the Purchaser must pay the Company's cost of service work, evaluation and testing.
- 11.9 The Purchaser must bear the cost of the transport of the Goods to and from the Company to make the warranty claim, and all insurance of the Goods.
- 11.10 The warranty contained in this clause 11:
- (a) applies only where the Goods have been used on a single 8 hour shift basis;
  - (b) applies only to parts of the Goods supplied by the Company, including electricals;
  - (c) excludes all wear and tear parts of the Goods including without limitation belts, cables, fuses and filters;
  - (d) excludes damage caused by misuse, neglect, accident, vandalism, damage in transit or normal wear and tear;
  - (e) is void if the Goods:
    - (i) are operated and/or maintained other than in conformity with the manufacturer's specifications;
    - (ii) are altered or modified in any form without the written direction or approval of the Company; or
    - (iii) are used or maintained by unauthorised personnel.
- 11.11 The Company makes no express warranties or representations other than set out in this clause 11.
- 11.12 The Company's liability for breach of this express warranty is limited to the cost of the original equipment or repairs.

## **12. Limitation of liability and indemnity**

- 12.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the Goods or Installation Services, the Contract does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or Installation Services or any contractual remedy for their failure.

- 12.2 If the Purchaser is a consumer nothing in these Terms restricts, limits or modifies the Purchaser's rights or remedies against the Company for failure of a statutory guarantee under the ACL.
- 12.3 If the Purchaser on-supplies the Goods to consumer:
- (a) if the Goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of the Company's liability to the Purchaser;
  - (b) otherwise, payment of any amount required under section 274 of the ACL is the absolute limit of the Company's liability to the Purchaser;
- howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the Goods or Installation Services by the Purchaser or any third party.
- 12.4 If clause 12.2 and 12.3 do not apply, then other than as stated in the Terms or any written warranty statement the Company is not liable to the Purchaser in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the Goods or Installation Services by the Purchaser or any third party.
- 12.5 The Company is not liable for any indirect or consequential losses or expenses suffered by the Purchaser or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.
- 12.6 The Purchaser acknowledges that:
- (a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by the Company in relation to the Goods or Installation Services or their use or application.
  - (b) it has not made known, either expressly or by implication, to the Company any purpose for which it requires the Goods or Installation Services and it has the sole responsibility of satisfying itself that the Goods or Installation Services are suitable for the use of the Purchaser.
- 12.7 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

### **13. Default**

- 13.1 Should the Purchaser:
- (a) fail to make due payment of the Purchase Price or any other sum payable by it under the Contract;
  - (b) commit a breach of the Terms;
  - (c) being a natural person, commit an act of bankruptcy; or
  - (d) being a corporation, by act or omission enable the appointment of an administrator, scheme manager, trustee, official manager, receiver, receiver and manager, liquidator or any other person authorised to enter into possession or assume control of any property of the Purchaser pursuant to a mortgage or other security,
- the Company may, without prejudice to any of its other accrued or contingent rights.

- (e) Withdraw any credit facilities which may have been extended to the Purchaser and require immediate payment of all monies owing or accrued thereunder.
- (f) Withhold any further deliveries of Goods or performance of Installation Services required under the Contract.
- (g) Demand the return of the Goods to the Company and, if the Purchaser does not comply with that demand within 48 hours of receiving it:
  - (i) the Company is entitled to take the action specified in clauses 8.1(g) and 8.1(h); and
  - (ii) the Purchaser is liable for all costs associated with the exercise by the Company of its rights under this clause 13.4, which are repayable on demand.
- (h) Suspend and/or terminate performance of any other contracts which the Company has with the Purchaser without incurring any liability for doing so.
- (i) Charge the Purchaser for, and the Purchaser must indemnify the Company from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Contract or to recover any Goods.

**14. Ownership and confidentiality**

- 14.1 The Purchaser acknowledges that it has no interest of any kind in any Proprietary Information in respect of the Goods. The Purchaser specifically acknowledges the Company's exclusive rights to ownership of any modification or development based thereon which is developed, supplied, installed or paid for by or on behalf of the Purchaser or any customer of the Purchaser.
- 14.2 The Purchaser acknowledges that the Proprietary Information is confidential and contains trade secrets and that its disclosure will cause the Company, or other parties, to suffer financial loss.
- 14.3 The Purchaser must implement all measures necessary to safeguard the confidentiality of the Proprietary Information including without limitation:
  - (a) allowing its employees, agents and customers access to the Proprietary Information only to the extent necessary to secure the performance of the Goods and requiring, as a condition of such access, that such persons comply with paragraphs (d) and (e);
  - (b) co-operating with the Company in the enforcement of such compliance by the Purchaser's employees, agents and customers;
  - (c) not removing or permitting the removal or alteration of any copyright or confidentiality labels placed on the Goods by the Company;
  - (d) not disassembling, de-compiling or reverse engineering any part of the Goods whether software or hardware;
  - (e) not reproducing any part of the Goods whether software or hardware.
- 14.4 The Purchaser indemnifies, and agrees to keep indemnified, the Company against any loss, costs, expenses, damages or harm suffered or incurred by the Company in connection with or arising out of or as a result of any breach by the Purchaser of any of the provisions of this clause 14.

**15. GST**

15.1 For the purpose of this clause 15 and except where the contrary intention appears, expressions used in this clause have the meanings given to them in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

15.2 Notwithstanding any other provision in the Contract, the Purchaser is not be obliged to pay the GST on a taxable supply to it, until the Purchaser has been given a valid tax invoice for the supply.

**16. General**

16.1 The laws of the State in which the head office of the Company is located ("the State") govern the Contract and the parties irrevocably submit to the exclusive jurisdiction of the Courts of the State.

16.2 The Company's failure to enforce any of these Terms shall not be construed as a waiver of the Company's rights.

16.3 Any provision of, or the application of any provision of, the Contract which is prohibited in any jurisdiction is ineffective only to the extent of that prohibition.

16.4 Any provision of, or the application of any provision of, the Contract which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any jurisdiction.

16.5 If a Term of the Contract is wholly or partly void, illegal or unenforceable, it may be wholly or partly severed (as appropriate) to be enforceable without affecting the enforceability of the remaining provisions of that Term.

16.6 The Purchaser must not novate or assign the Contract without the written consent of the Company, save that the Company may waive compliance by the Purchaser with this clause 16.6 if it so chooses.

16.7 A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.

16.8 Any variation or modification of the Contract must be in writing signed by both parties.