



ALFEX CNC AUSTRALIA PTY LTD

STANDARD TERMS AND CONDITIONS

1.	DEFINITIONS AND INTERPRETATION.....	3
2.	APPLICATION OF THESE TERMS	4
3.	QUOTATIONS AND PAYMENT.....	5
4.	SPECIFICATIONS OF GOODS	6
5.	DELIVERY, INSTALLATION AND RISK	7
6.	TIME FOR DELIVERY	9
7.	CANCELLATION AND NON-DELIVERY	11
8.	SHORTAGE DAMAGE AND MISDESCRIPTION	11
9.	LIMITATIONS ON LIABILITY AND INDEMNITY	11
10.	PASSING OF RISK AND RETENTION OF TITLE	13
11.	PERSONAL PROPERTY SECURITIES ACT	15
12.	CLAIMS AND RETURNS	16
13.	DEFAULT.....	17
14.	OWNERHSIP AND CONFIDENTIALITY.....	18
15.	GST.....	19
16.	MISCELLANEOUS.....	19
17.	WAIVER.....	20
18.	SEVERABILITY.....	20
19.	GOVERNING LAW	20

1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms:

“**ACL**” means the Australian Consumer Law Schedule to the *Competition and Consumer Act 2010*.

“**Company**” means Alfex CNC Australia Pty Ltd (ACN 120 731 268).

“**Consumer**” refers to the definition in the ACL.

“**Date of delivery**” is the date upon which the Goods and/or Installation Services is to be delivered to the Purchaser.

“**Date of the Quote**” is the date upon which the quote is executed by all parties.

“**Express Warranty**” means an express written warranty that is provided by the Company or the manufacturer of the Goods to the Purchaser outside of these Terms, if any.

“**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.

“**Goods**” means goods supplied by the Company to the Purchaser.

“**GST**” means GST within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

“**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.

“**Parties**” means the Company and the Purchaser.

“**PPSA**” means the *Personal Property Securities Act 2009* (Cth) and its associated Regulations as amended.

“**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.

“**Purchaser**” means the person or entity, jointly or severally if more than one, acquiring Goods or Installation Services from the Company.

“**Purchase Price**” means the price and costs set out in the Quote.

“**Quote**” means the price or costs for the provision of Goods and/or Installation Services provided by the Company to the Purchaser.

“**Terms**” means these Standard Terms and Conditions.

1.2 In these Terms:

- (a) headings are inserted for convenience only and do not affect the interpretation of these Terms;
- (b) nothing in these Terms shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law and which by law cannot be excluded, restricted or modified;
- (c) a word denoting the singular number includes the plural number and vice versa;
- (d) a word denoting a person includes an individual, partnership, corporation, firm, association (whether incorporated or not), authority, government or government authority and vice versa;
- (e) a word denoting a gender includes all genders;
- (f) a reference to a recital, clause, schedule or annexure is to a recital, clause, schedule or annexure to or of these Terms;
- (g) a reference to these Terms includes the recitals and any schedules, annexures, exhibits or attachments to these Terms;
- (h) a reference to a Party includes that Party's executors, legal representatives, transferees, administrators, successors and permitted assigns;
- (i) a reference to "dollars" or "\$" is to an amount in Australian currency and a reference to payment means payment in Australian currency.

2. APPLICATION OF THESE TERMS

- 2.1** The Goods sold by the Company are sold subject to these Terms and the Purchaser adopts and accepts these Terms.
- 2.2** These Terms prevail over any conditions of the Purchaser's purchase order to the extent of any inconsistency.
- 2.3** Unless otherwise agreed by the Company in writing, the Terms apply exclusively to every quote and cannot be varied or replaced by any other terms.
- 2.4** The Company in its absolute discretion may refuse to accept any offer.
- 2.5** 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. QUOTE AND PAYMENT

- 3.1** The Quote provided by the Company to the Purchaser is not an offer but is instead an invitation to treat.
- 3.2** Subject to any other provision contained herein (including the immediately preceding and the immediately following clauses), the Quote is valid for 14 days from the date of the Quote. A further Quote must be sought if this period expires.
- 3.3** All prices listed in any Quote provided by the Company are subject to and will be increased on account of:
- (a) exchange rate variation;
 - (b) customs clearance and handling fees;
 - (c) customs or excise duty, and any value added tax applicable to the supply.
 - (d) any other factor that that Company considers necessary.
- 3.4** The Company reserves the right to accept or reject in its absolute discretion any orders which may be received by it consequent upon any Quote.
- 3.5** Unless otherwise advised in writing by the Company, the Purchaser must pay the Purchase Price (including any applicable GST) as set out in the Quote:
- (a) by payment of a deposit in the amount shown in the Quote, in a manner acceptable to the Company; and
 - (b) Full balance to be paid prior to the delivery of the Goods.
- In the event where the Company and Purchaser are agreeable that a Letter of Credit is an acceptable form of payment for the balance of the Purchase Price, the Letter of Credit must be unconditional and irrevocable.
- 3.6** It is the Purchaser's responsibility to ensure that any financing arrangements for the acquisition of the Goods are in place so as to allow time for the price to be paid in full in cleared funds prior to delivery.
- 3.7** 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 Quote 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").

- 3.8** Additional Amounts must be paid by the Purchaser in the manner and within the time specified by the Company.
- 3.9** Any extension of credit to the Purchaser by the Company will be at the sole discretion of the Company.
- 3.10** The Purchaser shall be responsible for, and indemnifies the Company against, any loss or damage suffered by the Company due to delayed or non-delivery of the Goods if such delay or non-delivery is the result of the Purchaser being unable or unwilling to pay the agreed price for the Goods on the anticipated delivery date.
- 3.11** 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 Director or 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.
- 3.12** Payment by cheque is not deemed made until the proceeds of the cheque have cleared.
- 3.13** Payment terms may be revoked or amended at the Company's sole discretion immediately upon giving the Purchaser written notice.
- 3.14** 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 alone is responsible for examining the Goods before accepting them and for satisfying themselves about them, including:
- (a) their compliance with their description; and
 - (b) their condition, suitability and fitness for the specific purposes and requirements of the Purchaser.
- 4.3** The Purchaser acknowledges that the ability of the Goods to operate satisfactorily in accordance with their specifications is dependent 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.
- 4.4** The Company will not be held liable if the Goods do not meet the specific requirements of the Purchaser – the Purchaser must undertake its own prior due diligence in this regard.

- 4.5** 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.
- 4.6** Product information supplements or similar are provided for marketing and purposes only and do not form part of the Quote or these Terms between the Company and the Purchaser.

5. DELIVERY, INSTALLATION 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 Quote;
 - (c) delivery, installation and training are not included with the Goods unless specifically provided for in the Quote;
 - (d) a Company technician may provide the required setup and training for the Goods and connect it to a suitable and dedicated computer (not included unless specifically listed in the Quote).
 - (i) any specific requirements for installing the Goods including but not limited to building works, crane or lifting equipment is not included. Connection of the Goods to the Purchaser's chosen extraction system is only included if purchased through the Company;
 - (ii) any additional plumbing requirements are not included in the Quote and must be arranged by the Purchaser prior to delivery and installation of the Goods.
 - (e) removal of packaging is not included with the Goods and any costs incurred for the removal of packing will be at the Purchaser's expense;
 - (f) the Purchaser must pay the delivery fee upon delivery of the Goods;
 - (g) the Purchaser is responsible for unloading the Goods from the transport vehicle;
 - (h) the Company will not unload and move into position the Goods at the Purchaser's premises, but a Company technician may supervise the offloading and placement of the Goods if required;
 - (i) the Purchaser is required to provide one car space should they require any onsite service or support;
 - (i) any parking charges incurred by the Company or its representatives will be charged to the Purchaser;
 - (j) if the Purchaser is located outside of metropolitan areas additional travel and / or accommodation charges may apply for a Company technician to travel to the Purchaser's premises;

- (k) 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; and
- (l) 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 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 Upon delivery of the Goods, the ownership of the Goods passes onto the Purchaser. Once this occurs, the Company is not liable for any loss or damage.

5.4 Subject to clause 5.8, the risk in the Goods including for theft, damage or otherwise will pass to the Purchaser immediately on delivery of the Goods pursuant to clause 5.2.

5.5 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.

5.6 The delivery timeframes made known to the Purchaser are estimates only and the Company will not be liable for late delivery or non-delivery

5.7 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.

5.8 Where 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.

5.9 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);
- (d) the risk in the Goods passes to the Purchaser upon completion of the Installation Services.

5.10 The Company will not be liable for any loss, damage or delay occasioned to the Purchaser or its customers arising from late or non-delivery or late installation of the Goods.

5.11 Risk in the Goods passes to the Purchaser at the point of off-loading to the Purchaser, unless specified otherwise under these Terms.

5.12 The Goods will be fully insured by the Company up to the point of off-loading to the Purchaser, where upon the Goods and insurance of same becomes the responsibility of the Purchaser.

5.13 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 applicable 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 Quote; and
- (b) the Purchaser has:
 - (i) complied with all its financial obligations under the quote; 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 7.3 to the Anticipated Date is deemed to be a reference to the date 2 months after the date of the Quote;
- (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) except 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 these Terms 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) except 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 these Terms 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) except 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 these Terms and/or reject the Goods; and
- (c) except 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 by the Company.
- 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 by the Company, 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 order;
 - (b) upon the giving of such notice, the order 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, except as provided by clause 7.4.
- 7.4** Upon the termination of the order 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 order 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 order.
- 7.6** No order may be cancelled by the Purchaser except with consent in writing and on terms which will indemnify the Company against all losses.

8. SHORTAGE DAMAGE AND MISDESCRIPTION

- 8.1** The Purchaser waives any claim for shortage, damage or misdescription of any Goods delivered if a claim for short delivery, damage or misdescription has not been lodged with the Company within seven (7) days of delivery of the Goods.

9. LIMITATIONS ON LIABILITY AND INDEMNITY

- 9.1** Except as the Terms specifically state, or as contained in any express warranty provided in relation to the Goods or Installation Services, the quote 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.
- 9.2** The Purchaser acknowledges that:

- (a) the Company has not made any representation, warranty or undertaking about the condition or the quality of the Goods, their suitability or fitness for purpose or their safety unless:
 - (i) expressly provided in writing such as the Express Warranty for the purposes of these Terms); or
 - (ii) implied by legislation including the ACL (to the extent it applies and cannot be excluded);
- (b) whether or not the relevant provisions of the ACL or any law to a similar effect applies, the Company's liability for anything in relation to the Goods, their use, or their installation, including damage or economic loss to anyone, is limited as much as it can be. Whatever happens, the Company's liability is limited in its discretion to either:
 - (i) replacing the Goods with the same or equivalent Goods, or paying the cost of such replacement;
or
 - (ii) repairing the Goods or paying for their repair.

However, if the manufacturer of the Goods has given the Company warranties for the Goods then, to the full extent permitted by law, the Purchaser may make any claim on the manufacturer that the Company could have made.

9.3 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.

9.4 To the full extent permitted by law, all warranties, guarantees or similar implied by statute (including the *ACL* the *Goods Act 1958 (Vic)* and any similar legislation) or common law are excluded. 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 full extent permitted by law.

9.5 The Company is not liable for any indirect or consequential losses brought about by damage to the Purchaser's equipment, due to the transportation to or from the Company, and is also indemnified from any subsequent losses to the Purchaser's business.

9.6 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.
- 9.7** Components subject to wear during normal use and over time, such as paint, window finish and condition, light bulbs, seals etc., are excluded from any Express Warranty (if any).
- 9.8** Unless expressly stated to the contrary, manufacturer warranties do not include freight costs – they are parts only warranties.
- 9.9** Any Express Warranty will be void if:
- (a) manufacturer specified maintenance procedures are not adhered to and recorded; or
 - (b) the Goods have been subjected to neglect, accident, improper installation, maintenance or operation or
 - (c) the damage to or failure of the Goods has been caused by environmental factors (including but not limited to inadequate cooling, power supply issues, ambient air temperatures outside of the recommended range for the Goods and inadequate ancillary hardware such as extractors).
- 9.10** Nothing in these 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

10. PASSING OF RISK AND RETENTION OF TITLE

- 10.1** Notwithstanding that the risk in the Goods passes as referred to in 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 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.

10.2 Clause 10.1 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 quote.

10.3 If the Purchaser fails to make any payment relating to the Goods or the supply or delivery thereof, the Purchaser will permit the Company (or its representatives) to:

- (a) enter the Purchaser's premises to retake possession of the Goods without liability for trespass or any resulting damage; and
- (b) keep or resell the repossessed Goods to recover any and all losses associated with the Purchaser's breach.

10.4 The Purchaser agrees to do anything the Company reasonably considers necessary for the purposes of ensuring that a security interest created and / or registered under these Terms is enforceable, perfected and otherwise effective.

- 10.5** The Company may, at the Purchaser's expense, apply for any registration, or give any notification, in connection with a security interest created under these Terms

11. PERSONAL PROPERTY SECURITIES ACT

- 11.1** Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.
- 11.2** For the purposes of the PPSA:
- (a) words used in these Terms 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.
- 11.3** The security interest arising under this clause 11 attaches to the goods when the goods are collected or dispatched from the Company's premises and not at any later time.
- 11.4** 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.
- 11.5** 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.
- 11.6** 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.
- 11.7** 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 these Terms; 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.

11.8 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.

11.9 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.

12. CLAIMS AND RETURNS

12.1 The Purchaser must inspect the Goods immediately upon delivery and, if the Goods are damaged or not otherwise in conformity with the Quote, the Purchaser must give written notice to the Company of the details within seven (7) days of the date of delivery.

12.2 Subject to clause 12.8, no claims for damage or non-compliance with the specifications of the Quote by the Purchaser will be recognised where notice has not been given in accordance with clause 12.1.

12.3 Where Goods are the subject of a notice under clause 12.1:

- (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 deemed to have accepted the Goods and the Company is entitled to the Purchase Price.

12.4 After inspection has taken place as provided by clause 12.3:

- (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 Quote, 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 Quote, 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.

12.5 Except where notice has been given in accordance with clause 12.1, acceptance of the Goods is deemed for all purposes to have taken place:

- (a) when the Purchaser indicates 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.

12.6 Except where otherwise stated the Quote 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 12.8, the Company is under no obligation to accept the return of any Goods, and has sole and absolute discretion in relation thereto.

12.7 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 12.6, the Company's then current restocking charge, as varied from time to time, will be charged to the Purchaser and shall be immediately payable.

12.8 If the Purchaser is a consumer for the purpose of ACL, nothing in this clause limits any remedy available for a failure of any applicable guarantees in sections 56 and 57 of the ACL.

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 Quote;
- (b) commit a breach of these 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 Quote.
- (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 10.1(g) and 10.1(h); and
 - (ii) the Purchaser is liable for all costs associated with the exercise by the Company of its rights under this clause 13, 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) May at any time thereafter, without prior notice to the Purchaser and without prejudice to any other rights which it may have against the Purchaser, terminate any agreement relating to the Goods.
- (j) Charge the Purchaser for, and the Purchaser must indemnify the Company from, all costs and expenses (including without limitation all legal costs on an indemnity basis and expenses) incurred by it resulting from the default or in taking action to enforce compliance with these Terms or to recover any Goods; and
- (k) Charge interest on any money overdue during the period of default at a rate 2% higher than the rate for the time being fixed under section 2 of the Penalty Interest Rates Act 1983 (Vic) as at the date of the default; without affecting the rights of, or without limitation to the rights of, the Company.

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 Quote, the Purchaser is not 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. MISCELLANEOUS

- 16.1** If the Purchaser enters into these Terms as trustee of a trust, the Purchaser acknowledges that both it (in its capacity as trustee) and the trust are liable under these Terms.
- 16.2** The Company may transfer, assign or novate its interest in these Terms, without the Purchaser's consent.
- 16.3** The Purchaser must not novate or assign the quote without the written consent of the Company, except that the Company may waive compliance by the Purchaser with this clause 16.3 if it so chooses.
- 16.4** 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.
- 16.5** Any variation or modification of these Terms must be in writing signed by both parties.
- 16.6** In the interpretation of this Agreement:

- (a) parties must perform their obligations on the dates and times fixed by reference to the State of Victoria;
- (b) References to a party are intended to bind their executors, administrators and permitted transferees;
- (c) Obligations affecting more than one party bind them jointly and each of them severally

17. WAIVER

17.1 The failure, delay, relaxation or indulgence on the part of the Company in exercising any power, right or remedy conferred upon the Company by these Terms shall not operate as a waiver of that power, right or remedy, nor shall the exercise or any single or partial exercise of any power, right or remedy preclude any other or further exercise of such power, right or remedy or the exercise of any other power, right or remedy under these Terms.

17.2 These Terms, or a right created under them, may not be waived or varied except in writing, signed by the parties to be bound.

18. SEVERABILITY

18.1 If any provision of these Terms is invalid due to the operation of any statute or rule of law, then such provision is severed from these terms.

18.2 If any provision of these Terms is invalid, unenforceable or illegal, it is to be read down if possible, so as to be valid and enforceable, and shall otherwise be capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Terms.

19. GOVERNING LAW

19.1 These Terms shall be governed by and construed in all respects in accordance with the laws of the State of Victoria and the parties submit to the non-exclusive jurisdiction of the Courts of that State in respect of all matters arising under, or in relation to, these Terms.