

Goods are sold and supplied by MEGAVAR PTY. LTD. on the following General Terms and Conditions of Business ("**Contract**") unless otherwise expressly agreed in writing between MEGAVAR PTY. LTD. and the Purchaser.

1. DEFINITIONS

- 1.1. "Vendor" means MEGAVAR PTY. LTD.
- 1.2. "Purchaser" means the person, company or other legal entity to whom or to which this document is addressed.
- 1.3. "Australian Consumer Law" means the Competition and Consumer Act 2010, as amended from time to time.
- 1.4. "Goods" means the goods, equipment, material and/or chattels supplied by the Vendor to the Purchaser as indicated in an Order.
- 1.5. "Commencement Date" means the commencement date of the particular contract of which these terms and conditions form part.
- 1.6. "day" or "days" means calendar days unless stated otherwise.
- 1.7. "Intellectual Property Rights" means all rights in and to all technology, techniques (patented and non-patented), know-how, confidential information, patents, copyright, designs, trade names, inventions, discoveries and all other rights as defined by Article 2 of the Convention of July 1967 establishing the World Intellectual Property Organisation, including all applications for any of such rights as may exist anywhere in the world.
- 1.8. "Manufacturer" means the supplier from which Megavar purchases the Goods
- 1.9. "Order" means the Purchase Order issued by the Purchaser and accepted by the Vendor in **clause 3**.
- 1.10. "PPS Act" means the *Personal Property Securities Act 2009 (Cth)* as amended from time to time.

2. GENERAL

- 2.1. These terms form part of any quotation or contract to which they are attached or linked, and any Goods to be supplied by the Vendor will be or are supplied subject to these terms.
- 2.2. If there is any inconsistency or variance between the provisions of any quotation by the Vendor and these terms then the former shall prevail, to the extent of the inconsistency or variance PROVIDED SUCH THAT notwithstanding acceptance by the Vendor of any Order or offer to purchase from the Purchaser that may contain any provision inconsistent with or purporting to vary or reject any of these terms, any contract between the Vendor and the Purchaser arising from the Vendor's acceptance of such Order or offer to purchase shall be subject to these terms unless the Vendor expressly agrees in writing to any variation thereof.
- 2.3. If one or more clauses of these terms or any provisions included in any quotation or contract between the Vendor and the Purchaser is declared legally invalid the remainder of these terms and any such provisions shall be in no way affected.
- 2.4. These terms shall apply to any separable portion of any quotation or contract arising between the Vendor and the Purchaser and to the Goods supplied thereunder.
- 2.5. THE PURCHASER'S ATTENTION IS DRAWN TO STATUTORY PROVISIONS WHICH MAY APPLY TO THIS CONTRACT. Any rights, remedies, liabilities, conditions, warranties, standards or specifications which apply to or in respect of any contract arising between the Vendor and the Purchaser under or by virtue of the Australian Consumer Law or any other enactment of Australia or of any State or Territory thereof affecting such contract and which cannot be excluded from such contract are deemed to apply to such contract notwithstanding any inconsistency with these terms.
- 2.6. Subject to **clause 2.5**, to the fullest extent permitted at law, no warranties expressed or implied by law, trade custom or otherwise and no representations, descriptions, conditions or statements are binding on the Vendor unless set out in these terms or expressly incorporated into these terms by reference by the Vendor in writing.

3. QUOTATION AND OFFER TO PURCHASE

- 3.1. The Vendor's quotation is not to be construed as an obligation to sell Goods to the Purchaser but is rather an invitation to the Purchaser to make an offer to purchase Goods subject to these terms. The Purchaser's Order shall constitute such an offer to purchase. The Vendor reserves the right to make alterations to its quotation at any time before its acceptance of an Order from the Purchaser.
- 3.2. Notwithstanding that a quotation has been made no contract exists between the Vendor and the Purchaser until the Vendor accepts the Purchaser's Order in writing.
- 3.3. The Vendor's quotation relates only to such Goods as are specified therein and is given subject to such Goods being available at the time of receipt of the Purchaser's Order. Notwithstanding any stipulation or implication in such quotation, the Vendor reserves the right to obtain such Goods or any part thereof from any factory or works in the Vendor's supplier network, including any subsidiary or affiliate thereof.
- 3.4. Prices included in the Vendor's quotation are based upon the quantities of Goods and description of the Goods referred to in the quotation. Should the Purchaser offer to purchase a quantity of Goods which is at variance with that referred to in the quotation, the Vendor reserves the right to amend the price quoted for such Goods.
- 3.5. The quotation remains open for acceptance for a period of 28 days from the date of the quotation unless an alternate period is specified in the quotation.

4. SPECIFICATIONS

Not Part of Contract

4.1. All descriptive and shipping specifications, dimensions and weights submitted by the Vendor in relation to any quotation are approximate only and any descriptions, illustrations and data contained in any catalogues price lists and/or other advertising or promotional material are intended by the Vendor only to present a general view of Goods described therein and none of such specifications, dimensions, weights, descriptions, illustrations or data shall form part of any contract arising between the Vendor and the Purchaser.

Confidential Information

4.2. All information relating to patents, designs, other Intellectual Property, specifications, computer programs, information, samples and the like provided by the Vendor shall be regarded as confidential and shall not be copied or disclosed by the Purchaser to a third party except with the Vendor's prior written consent, and shall only be used pursuant to the contract for which they are provided.

Sufficient Information to Be Provided

4.3. The Purchaser's Order shall be accompanied by sufficient information to enable the Vendor to commence work and proceed without interruption. The Purchaser shall be responsible for and warrant accuracy of information.

Incorrect Information

4.4. The Purchaser shall be responsible for and bear the cost of any alteration to Goods supplied by the Vendor arising from any discrepancy, error or omission in any drawing, specification or other information supplied or approved by the Purchaser.

Suitability for Purpose

4.5. Unless the Vendor has specifically agreed otherwise in writing, it has no knowledge of the use to which the Purchaser proposes to put any Goods supplied by the Vendor to the Purchaser and the Vendor makes no representation nor gives any warranty in respect of such particular use.

Responsibility for Licenses, Approvals etc

4.6. Unless otherwise agreed in writing it is the responsibility of the Purchaser to obtain and provide any licences, access, approvals or permits necessary for performance of any contract arising between Vendor and Purchaser.

5. PERFORMANCE

Performance

5.1. Any performance figures provided by the Vendor are based on the Vendor's experience and are such as the Vendor could expect to obtain on testing. The Vendor shall be under no liability or damages should Goods supplied by it fail to attain such figures unless the Vendor specifically guaranteed in writing the attainment of such figures, subject to recognised tolerances.

5.2. Where the Vendor has guaranteed performance figures for Goods supplied by it and figures attained in respect of such Goods on any test are outside applicable tolerances, the Vendor shall be given reasonable time to rectify the performance of such Goods and the Vendor's liability shall be subject to **clause 13** of these terms.

6. TIME/DATE FOR SUPPLY

Base Date

6.1. All dates or times quoted for completion or delivery shall be calculated from date of acceptance by the Vendor of the Purchaser's Order, together with sufficient information as referred to in **clause 4.3** of these terms.

Quoted Time

6.2. The Vendor will use reasonable endeavours to meet any delivery date quoted but such date is an estimate and not to be construed as a fixed date or time unless specifically agreed to by the Vendor in writing.

Extension of Time

6.3. Any contract period shall be extended in respect of any delay relating to either instructions given by, or a lack of instructions from, the Purchaser, or other acts or omissions of the Purchaser or those for whom it is responsible, including delay or withdrawal of access by the Purchaser to premises required for this Contract.

6.4. The Vendor shall not be liable to the Purchaser for any failure to meet any obligation under any contract arising between the Vendor and the Purchaser to the extent such failure is caused by or arises from:

- i) strikes, lockouts or other industrial unrest and disputes, shortages of labour or materials, delay in manufacturing by the Vendor, its associates or suppliers, riot, civil commotion, fire, flood, earthquake, drought, loss or delay at sea or otherwise, breakdowns, pandemic, epidemic or war
- ii) any other cause whether arising from natural causes, human agency or anything beyond the reasonable control of the Vendor.

7. PACKING

7.1 Unless stated otherwise in any quotation packing is not included in the contract price. Any packing required by the Purchaser and not specifically stated as being included in any quotation shall be to the Purchaser's account.

7.2 Unless otherwise stipulated in writing by the Vendor any packing which may be provided by the Vendor is not returnable and must be disposed of by the Purchaser. Where such stipulation is made the packing remains the property of the Vendor and must be returned to the Vendor's source of supply carriage paid by the Purchaser.

8. POINT OF DELIVERY

Delivery Ex-works

8.1 Unless stated otherwise in any quotation, Goods are supplied ex-works at the place of manufacture and delivery to a carrier's vehicle, including loading, shall constitute delivery by the Vendor to the Purchaser. The carrier's vehicle shall be of a type allowing vertical or horizontal access for loading as required by the Vendor.

Delivery beyond Place of Manufacture

8.2 Unless the Vendor has provided in any quotation for delivery beyond the place of manufacture, where the Purchaser requests delivery beyond such point the Vendor, at its sole discretion, may agree to act as agent for the Purchaser to effect such delivery and all costs of carriage and insurance in relation thereto will be to the Purchaser's account. In any event the Purchaser shall ensure provision of reasonable access to the point of delivery and for off-loading and/or handling without delay.

Damage or Loss in Transit

8.3 Where damage to Goods in the course of delivery is the Vendor's responsibility, the Vendor shall at its sole discretion repair or replace free of charge Goods so damaged provided the Vendor is notified of damage within 48 hours of delivery.

Shortages in Delivery

8.4 Any claims for shortages in deliveries shall be notified in writing to the Vendor within seven days of delivery.

Partial Deliveries

8.5 The Vendor reserves the right to make partial deliveries of any Goods and to invoice such deliveries separately. Unless otherwise agreed in writing by the Vendor and the Purchaser, where such invoices relate to complete and usable Goods, payment thereof will fall due in accordance with **clause 11** of these terms.

Storage

8.6 If, after a period of ten days from the date of notification by the Vendor to the Purchaser, the Goods are ready for delivery and delivery of the Goods is delayed for any reason beyond the Vendor's reasonable control the Vendor shall be entitled, at its sole discretion, to arrange for suitable storage of such Goods at its premises or elsewhere and the Vendor shall take reasonable measures to protect the Purchaser's interest in such Goods. To the extent permitted by law, the Purchaser shall pay all reasonable costs of such storage together with all reasonable costs of insurance, demurrage, handling and other contingent charges applicable as set out in invoices for payment sent to the Purchaser by the Vendor in accordance with **clause 11** of these terms.

Cost

8.7 Except where stipulated in the quotation, all freight and transport costs are at the Purchaser's cost. In the absence of instructions from the Purchaser on the choice of carrier, the Vendor will instruct on the Purchaser's behalf a carrier to complete delivery. For the avoidance of doubt, delivery shall not be by way of airfreight unless agreed to in writing by the Vendor and set out expressly in the Vendor's quotation.

9. INSURANCE, RISK AND PROPERTY

Insurance

9.1. Goods in respect of which the Manufacturer acts as Vendor's agent in accordance with **clauses 8.2, 8.6 and 8.7** of these terms will, unless otherwise required in writing by the Purchaser, be insured for their contract value plus 10%. The Manufacturer's liability in respect of such Goods shall be limited to the extent of such insurance.

9.2. The Vendor will maintain public and products liability insurance for an amount of \$1 million any one claim and in the aggregate, in respect of the liability of the Vendor arising out of the performance by the Vendor of the contract for the Purchaser, but limited always to the extent of cover and limitation of liability provided in the insurance maintained under this clause.

Risk

9.3. Risk in Goods, the subject of any contract between the Vendor and the Purchaser shall remain with the Vendor only until the first in time of any one of the following events:

- i) the passing of property in such Goods to the Purchaser
- ii) the delivery of such Goods by the Vendor to the Purchaser or to a carrier at the contractual point of delivery
- iii) upon such Goods leaving the Vendor's premises at the request of the Purchaser
- iv) the expiry of ten days from the date of notification by the Vendor to the Purchaser that such Goods are ready for delivery; and thereafter risk of damage, loss or deterioration of the Goods from any cause whatsoever shall pass to the Purchaser.

Preservation of Property Rights

9.4. Notwithstanding that risk in any Goods the subject of a contract between the Vendor and the Purchaser may in whole or in part be with the Purchaser title and property in such Goods shall remain with the Vendor until paid for in full by the Purchaser. Prior to the passing of property in such Goods they may not be resold, pledged or, subject to **clauses 9.6 to 9.9** below, given in security by the Purchaser in any circumstances whatsoever.

9.5. Until such time as title and property in such Goods passes to the Purchaser the relationship between Vendor and the Purchaser shall be fiduciary and the Purchaser shall hold the Goods as bailee for the Vendor, and:

- i) the Purchaser will store such Goods at their premises separately from their own Goods or those of any other person and in a manner which makes them readily identifiable as the Vendor's Goods

- ii) The Purchaser is licensed by the Vendor to, in the ordinary course of business, process in such fashion as they may wish and/or incorporate such Goods in or with any product or products, subject to the express condition that the new product or products or any other chattel whatsoever containing any part of such Goods shall be separately stored and marked so as to be identifiable as being made from or with Goods the property of the Vendor
- iii) if Goods the property of the Vendor are mixed with goods and/or material the property of the Purchaser or are processed with or incorporated therein, the product thereof shall become and/or shall be deemed to be the sole and exclusive property of the Vendor
- iv) if Goods the property of the Vendor are mixed with goods and/or material the property of a third party or are processed with or incorporated therein, the product thereof shall be deemed to be owned in common by the Vendor and third party
- v) the Purchaser shall be at liberty to agree to sell the Goods, the property of the Vendor, or any product produced from or with such Goods, on condition the contract to sell is made on the basis the Purchaser is agent and bailee of the Vendor, the proceeds of sale shall be held in trust on behalf of the Vendor by the Purchaser, shall not be mingled with other monies and shall be identifiable as the Vendor's monies. The Purchaser shall not represent to third parties that it is acting for the Vendor and the Vendor will not be bound by any contracts with third parties to which the Purchaser is a party
- vi) if the Purchaser does not receive the proceeds of any such sale they will, if called upon so to do by the Vendor, within five days assign and sell to the Vendor for nominal consideration all rights against the person or persons to whom such Goods and/or products were to be sold by the Purchaser.

Purchase Money Security Interest

- 9.6. By placing an Order for the Goods, the Purchaser acknowledges, accepts and agrees that this Contract creates a purchase money security interest (as that term is defined in the PPS Act) in the Goods as commercial property and, for avoidance of doubt, the proceeds of sale of the Goods. The Purchaser must, promptly upon request by the Vendor, sign any documents (including any new contracts), provide all necessary information and do anything else required by the Purchaser to ensure that the security interest is a perfected purchase money security interest (as that term is defined in the PPSA).
- 9.7. Until payment to the Vendor has been made in full for the Goods, the Purchaser acknowledges and agrees that in relation to Goods that are inventory, the Purchaser will not allow any security interest to arise in respect of the Goods unless the Vendor has perfected its purchase money security interest.
- 9.8. Until payment to the Vendor has been made in full for the Goods, the Purchaser acknowledges and agrees that in relation to Goods that are inventory, the Purchaser will not allow any non-purchase money security interest to arise in respect of the Goods unless the Vendor has perfected its purchase money security interest prior to the Purchaser's possession of the Goods.
- 9.9. The Purchaser waives its right under the PPS Act to receive a copy of any verification statement or financing change statement (as those terms are defined in the PPS Act)

10. PRICES AND CONTRACT PRICE ADJUSTMENT

Price Basis

- 10.1. Unless otherwise stated in writing, prices quoted by the Vendor are based on the costs of material, labour, freight, insurance, and duties and other costs and charges ruling at the date of any quotation or such other date specifically referred to therein in respect of such matters and such prices shall be subject to adjustment in respect of any variation in such costs, rates or charges or their method of assessment occurring after that date and until the completion of any contract between the Vendor and the Purchaser based on such quotation including, without limitation, changes in:
 - i) Australian costs
 - ii) overseas costs
 - iii) foreign currency and exchange rates (refer to **clause 10.14**)
 - iv) customs and excise duties, levies, charges, imposts and the like
 - v) transport costs.
- 10.2. The Vendor will give the Purchaser reasonable notice of any increase in the prices quoted where the amount of such increase is, in the Vendor's opinion, substantial. Upon receipt of such notice, the Purchaser may terminate the contract with the Vendor without liability, provided that the Purchaser gives the Vendor seven business days' notice in writing of such termination and provided that it has first made payment to the Vendor for any Goods supplied by the Vendor to the Purchaser prior to such termination.

Tax and other excluded charges

- 10.3. Charges specifically excluded in any quotation shall be to the Purchaser's account at cost.
- 10.4. Unless otherwise stated in writing in any quotation sales tax or any other tax, levy or the like imposed on either the sale, manufacture, dealing with, distribution, import or use of goods or measured by the selling price of goods or otherwise howsoever levied against or added to the price of goods shall in all cases be an excluded cost that shall be added to the price for payment by the Purchaser.

10.5. Unless otherwise stated in writing in any quotation customs duties, levies, taxes, (carbon) costs and the like imposed in respect of the goods (but always excluding those taxes referred to in **clause 10.3** of these terms) applicable at the date of any quotation or such other date specifically referred to therein in respect of such matters will be added to the price and any variation thereto, for whatever reason, shall be to the Purchaser's account at cost in accordance with **clause 10.1** of these terms.

GST

10.6. GST means any tax, levy, charge or impost implemented under the A New Tax System (Goods and Services Tax) Act (the "GST Act") or any Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act.

10.7. The price shown in this Contract does not include GST.

10.8. If the Vendor becomes liable to pay GST in respect of the sale or supply of the subject matter of this Contract, the price payable under this Contract will be increased so that after payment of the GST by the Vendor, the nett amount retained by the Vendor is the same as before GST applied.

10.9. If the Vendor becomes liable to pay GST, the Vendor will notify the Purchaser of the amount of GST and will provide the Purchaser with the appropriate invoice including a reference to the applicable amount of GST.

10.10. The Purchaser shall pay that invoice pursuant to the terms and conditions of this Contract.

Cost of Delay or Variation

10.11. The Purchaser is entitled to make variations to the Order including increasing or reducing scope of supply, quality, design or change of delivery time, provided variations are within what the parties could reasonably expect when entering into the Contract and the variation shall not be greater than 15% of the value of the original Order. The variation will be formalised by the Vendor issuing a variation order.

Costs of Complying with Regulations

10.12. If the costs to the Vendor of performing its obligations under any contract between the Vendor and the Purchaser shall be varied by reason of the creation or amendment after the date of quotation of any law or of any order regulation or by-law having the force of law or any applicable standard, the amount of such increase or decrease shall, as applicable be added to or deducted from the contract price AND even where such price is quoted as firm it is subject to adjustment for cost variations caused by such creation or amendment.

Cost

10.13. For the purpose of **Clause 10** the expression 'cost' includes overheads and interest paid by the Vendor.

Exchange Rate Variation

10.14. Exchange rate variation payable shall be calculated at the rate of exchange actually paid by the Vendor against the exchange rate in the quotation. If prices are expressed in different currencies and the Purchaser requires payment in different currency, the Purchaser shall bear foreign exchange risk arising from such payment.

11. PAYMENT

Payment Due

11.1. Unless otherwise agreed in writing by the Vendor and Purchaser full payment for the Goods, delivery and any additional costs shall be due on lodgment with the Vendor of the Purchaser's Order.

11.2. The Purchaser is not entitled to withhold payment or make any deduction from the contract price in respect of any setoff or counter claim.

12. WARRANTY

12.1. In relation to any of the Vendor's Goods purchased by the Purchaser costing up to \$40,000, such Goods come with guarantees that cannot be excluded under 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 such Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.

12.2. The Vendor hereby warrants to the Purchaser that Goods supplied by the Vendor, shall be free from defects due to faulty design, materials and workmanship (except as regards defects specifically drawn to the Purchaser's attention, before any contract is formed between the Vendor and the Purchaser or, if the Purchaser examines the Goods the subject of such contract before such contract is formed then except as regards defects which that examination ought to reveal). If the contract between the Vendor and the Purchaser is a contract for the supply of consumer goods, this warranty is provided in addition to other rights and remedies the Purchaser is entitled to under the Australian Consumer Law and any other law relating to the provision of the Goods.

12.3. If it is proven to the Vendor's reasonable satisfaction that Goods supplied by the Vendor are not free from defects due to faulty design, materials and workmanship (except as revealed by examination as referred to in **clause 12.2** of these terms) then the Vendor shall, at no cost and at its option, either:

- i) repair such Goods;
- ii) replace such Goods with the same or equivalent Goods at the point of delivery applicable to the contract under which such Goods were supplied to the Purchaser by the Vendor;
- iii) refund to the Purchaser the contract price of such Goods.

12.4. The warranty above does not extend to include the Vendor's labour costs. Any removal, reinstallation and other consequential costs will be for the Purchaser's account. The warranty cover for repaired/replaced items will

expire on the same date as the warranty for the rest of the Goods. When warranty repairs are required to be carried out at locations other than Manufacturers' Service Centres, then the cost for labour, travel, travel time and accommodation costs incurred by the Vendor will be to the Purchaser's account.

12.5. This warranty does not apply in respect of defects due to or arising from:

- i) incorrect or negligent handling, disregard of operating and/or maintenance instructions, overloading, unsuitable operating conditions, defective civil or building work, lightning, accident, neglect, faulty erection (unless carried out by the Vendor), acts of God, causes beyond the Vendor's control or whilst unauthorised repairs or alterations have been carried out or non-compliance with Goods' power and grounding specifications
- ii) the use of goods of consumable nature
- iii) fair wear and tear.

12.6. This warranty does not apply unless:

- i) the Goods have been properly handled, located, used, maintained and stored;
- ii) defects occur within 12 calendar months after the Goods have been delivered to the Purchaser or, if delivery was delayed for reasons beyond the Vendor's control then within 12 calendar months of deliveries or within 18 calendar months after the Vendor first notified the Purchaser that the Vendor was ready to deliver the Goods (whichever period expires earlier);
- iii) the Vendor is notified in writing within five days of the alleged defect first coming to the notice of the Purchaser;
- iv) the Purchaser returns the defective Goods to the Vendor, or if necessary, at the sole discretion of the Vendor, to the works where such Goods were manufactured or assembled, free of charge; and
- v) Purchaser has fulfilled all of his/its contractual obligations.

12.7. The parties agree that the Purchaser shall not make a claim against the Vendor and the Vendor shall have no further liability for or in connection with the Goods upon the expiry of two years from the date of the end of the defects liability period in clause 12.5(ii), and claims made after that period will be time barred absolutely.

12.8. The Warranty is personal to the Purchaser and non-assignable without prior written consent of the Vendor.

12.9. MEGAVAR can be contacted on 1300 730 499 or by emailing: service@megavar.com.au

Exclusion of UN Convention

12.10. To the fullest extent permitted by law the parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

13. LIMITATION OF LIABILITY

Notwithstanding anything else contained in this Contract, and except to the extent that this Contract applies to a consumer as defined in Australian Consumer Law, the Vendor shall not be liable (to the fullest extent permitted at law) by way of indemnity, guarantee, breach of contract, statutory duty or tort (including but not limited to negligence) or any other legal principle or doctrine for:

- i) any loss of profits, use, revenue or anticipated savings; or financial or economic loss (whether direct or indirect) or consequential or indirect loss or damage whatsoever
- ii) any other amount which in aggregate with any other liability (past, present or future) to which this clause applies, that exceeds the aggregate value of all payments of the contract price made under these terms (except in relation to a consumer contract, as defined in Australian Consumer Law. Otherwise, where it is permitted under Australian Consumer Law or otherwise at law the remedies in clause 12.3 above will apply.

14. PATENTS AND DESIGN RIGHTS

14.1. Except where claims relate to Goods or parts thereof based on instructions specified or provided by the Purchaser, if a sustainable claim is made in relation to infringement or any Letters Patent, Registered Design, Trademark, copyright or other intellectual property right, in respect of which publication occurs prior to the date of any quotation relating to Goods the subject of such claim, and in respect of which quotation such Goods were supplied by the Vendor to the Purchaser, the Vendor will at its expense replace or modify the subject of such infringement with a non-infringing part or procure for the Purchaser the right to use such part provided the Vendor is given full opportunity to conduct all negotiations in relation to such a claim AND PROVIDED the Vendor shall not incur any liability for losses arising from the Purchaser's use or non-use of any infringing part.

14.2. The Purchaser warrants any instructions given to the Vendor shall not infringe Letters Patent, Registered Design, Trademark, copyright or other intellectual property rights; and the Purchaser indemnifies the Vendor against costs which may be incurred by the Vendor by reason of such infringement.

14.3. Ownership of Intellectual Property Rights (other than third party intellectual property rights) associated with the Works and any documentation provided by the Vendor pursuant to these terms is vested and shall remain vested in the Vendor. The Vendor grants the Purchaser a royalty free, non-exclusive, non-transferable, perpetual (subject to compliance with the terms of the license) license to use all Intellectual Property Rights associated with the Works and any documentation provided pursuant to these terms for the installation, use, support, repair, or maintenance of the Works by or on behalf of the Purchaser."

15. BANKRUPTCY, LIQUIDATION AND DEFAULT

If the Purchaser makes any default under this Contract any contract between the Vendor and the Purchaser, or:

- i) being a person, dies or commits an act of bankruptcy
- ii) being a company, take or shall have taken against it any action for the winding up of the company or the placing of the company under official management or receivership other than for purposes of reconstruction or has an execution levied against it; then the Vendor at its sole discretion and without prejudice to any other rights it may have under such contract or at law may give notice in writing to the Purchaser and after ten days from the date of such notice may, unless otherwise by law, suspend or cancel such contract (including, without deferring manufacture or delivery of Goods) or require payments in cash before or on delivery of the Goods notwithstanding the terms of payment specific or may cancel any undelivered or uncompleted Goods then outstanding under such contract or may take possession of the Goods or any part thereof and for the purpose thereof enter upon any premises where such Goods are stored or reasonably thought to be stored and dispose of them in its own interest without prejudice to any claim it may have for damages for any loss resulting from such disposal and may retain any security or monies held paid by the Purchaser in relation to such contract and apply such security or monies against assessed loss or damage incurred by it in relation to such default.

16. SERVICE OF NOTICES

For serving documents or notices in connection with quotes or contracts, either party shall forward documents or notices by tracked express post mail in Australia or first class air mail beyond Australia, with sufficient postage prepaid to the last known address of the other party and shall be deemed received by the other party on the second business day after posting. Everyday communications may be sent by email but will not be construed as notices.

17. CODE OF CONDUCT/BUSINESS ETHICS

17.1. The Purchaser warrants it will not, directly or indirectly, and has no knowledge that persons connected with the Purchaser will, make payment, gift or other commitment to any person including directors and employees of the Vendor or any other party in a manner contrary to applicable laws, policies or standards of conduct, for the purposes of obtaining or facilitating the Purchaser's activities under this Contract.

17.2. Nothing in this Contract shall render the Vendor liable to reimburse the Purchaser for such consideration.

17.3. The Purchaser shall at all times comply with all relevant laws, regulations, ordinances and rules.

18. DISPUTE RESOLUTION

18.1. If there is a dispute between the parties arising out of, or in connection with, this Contract, neither of the parties is to commence any proceedings relating to that dispute until the following procedure has been complied with:

- i) the party claiming a dispute has arisen must give written notice to the other party specifying the nature of the dispute (Dispute Notice) which:
 - (1) states that it is a Dispute Notice under this clause
 - (2) identifies the dispute
 - (3) states the alleged relevant facts that are relied on
- ii) Within 5 Business Days of a Dispute Notice being received by a party, a senior representative (such as the CEO) of each party must meet and will endeavour, in good faith, to:
 - (1) resolve the whole of the dispute or as much of the dispute as possible
 - (2) to the extent the dispute is not wholly resolved, decide what process will be used to resolve the dispute or the remaining matters that are not agreed.

18.2. Any contract reached at a meeting pursuant to this **clause 18** must be in writing and signed by both parties.

18.3. If a dispute has not been resolved within 30 Business Days after the relevant Notice of Dispute was given, then either party may (subject to any agreement to the contrary) issue proceedings to have the dispute determined, whether or not any negotiation process has commenced or concluded.

18.4. A party seeking urgent interlocutory relief may, by notice to the other party, elect not to comply with the provisions of this clause, but only to the extent of the relief sought, and only for the period required to dispose of the application for interlocutory relief.

18.5. Pending resolution of the dispute, this Contract will remain in full effect without prejudicing the parties' respective rights and remedies.

19. GENERAL

Severance

19.1. If any provision of this Contract or the conditions is declared by a judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, or indications to that effect are received by either of the parties from any competent authority, that provision will be severed from this Contract and the remaining provisions of this Contract will remain in full force and effect unless the Vendor decides that the effect of such severance is to defeat the original intention of the parties in which event the Vendor will, to the extent permitted by law, be entitled to terminate this Contract by 28 days' notice to the Purchaser.

Whole Agreement

19.2. Without limiting **clause 4.1** and to the extent permitted by law, each party acknowledges that this Contract contains the whole agreement between the parties in relation to the subject matter of their dealings and has not relied upon oral or written representation made to it by the other party, or its employees or Distributors, and has made its own independent investigations into all matters relevant to the subject matter of their dealings.

Supersedes Prior Agreement

19.3. This Contract supersedes any prior agreement between the parties whether written or oral and any such prior agreements are cancelled as at the commencement date but without prejudice to any rights which have already accrued to either of the parties.

Change of Address

19.4. Each of the parties will give notice to the other of the change or acquisition of any postal, delivery, email address or telephone, at the earliest possible opportunity but in any event within 48 hours of such change or acquisition.

Interpretation

19.5. Headings contained in this Contract are for reference purposes only and will not be deemed to be any indication of the meaning of the clauses and sub-clauses to which they relate.

19.6. In this Contract, the singular includes the plural and vice versa.

Warranties by the Parties

19.7. Each of the parties warrants it has the power to enter into this Contract and has obtained all necessary resolutions and approvals to do so.

19.8. The Purchaser warrants:

- i) when entering into this Contract, it is not acting as the agent of any other person, company or other organization
- ii) Goods will not be used by the Purchaser for personal, domestic or household purposes.

No Partnership

19.9. The parties are not partners or joint venturers.

The Vendor's Right to Assign

19.10. This Contract and all rights under it may be assigned or transferred by the Vendor. The Purchaser may not assign or otherwise transfer its rights without the prior written consent of the Vendor.

Proper Law and Jurisdiction

19.11. These terms and conditions are governed by and construed with reference to the laws for the time being in force in the State of Tasmania. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the State of Tasmania, and of any courts have jurisdiction to hear appeals from any of those courts, and waives any right to object to any proceedings being brought in those courts.

Rights Cumulative

19.12. All rights granted to the Vendor are cumulative and no exercise by either party of any right under this Contract will restrict or prejudice the exercise of any other right granted by this Contract or otherwise available to the Vendor.

Waiver

19.13. Failure by the Vendor to enforce at any time or for any period any one or more of the terms or conditions of this Contract is not a waiver of them or of the right at any subsequent time to enforce all terms and conditions of this Contract.

Costs

19.14. Each of the parties will pay the costs and expenses incurred by it in connection with this Contract.

Last updated March 2016