



STANDARD TERMS AND CONDITIONS SUPPLY

1. Application

These T&Cs, and no terms and conditions of the Customer, will apply to any order for and any supply of Goods and/or Services by the Supplier to the Customer.

2. Quotations and Orders for Goods / Services

2.1 Unless otherwise stated by the Supplier, any quotation by the Supplier will remain valid for 30 days from the date of the quotation provided that the Supplier may withdraw or vary a quotation at any time prior to the Supplier's acceptance of an Order.

2.2 Any Order by the Customer to the Supplier and/or any acceptance of any Goods and/or Services by the Customer will constitute agreement to these T&Cs by the Customer.

2.3 No Order by the Customer or quotation by the Supplier will be binding on the Supplier unless the Supplier accepts the Order.

2.4 If the Supplier accepts an Order, the parties will have created a binding Contract and the Supplier will use its best endeavours to supply the Goods and/or Services to the Customer, and the Customer will pay the Price to the Supplier in accordance with the terms of the Contract (which will include these T&Cs), but the Contract will be subject to:

(a) the availability of the materials and labour necessary to supply the Goods/Services; and

(b) the Customer completing the Supplier's application for commercial credit and the Supplier agreeing to grant credit to the Customer (if the Customer is seeking credit terms).

2.5 The Customer is not entitled to cancel any Order or Contract and must pay to the Supplier any costs associated with the Customer purporting to cancel any Order or Contract.

2.6 The Supplier may cancel any Contract at any time prior to delivery of the Goods and/or Services with no liability other than to repay any amount of the Price paid in advance of the cancellation.

3. Information provided and Customer obligations

3.1 The Customer must provide to the Supplier all information, instructions, reports, drawings, plans, specifications, properties and facts relevant to the Goods and/or Services and performance of the Supplier's obligations, at the time the Customer requests any quotation from the Supplier and prior to providing any Order to the Supplier.

3.2 If at any time the Supplier considers that any information, instructions, reports, drawings, plans, specifications, properties or facts provided by the Customer to the Supplier are not sufficient to enable the Supplier to supply the Goods and/or Services to the Customer in accordance with the Contract, the Customer must, at the Customer's cost, provide such further information, documents or assistance as the Supplier considers reasonably necessary.

3.3 The Supplier will be entitled to rely on the accuracy of any information, instructions, reports, drawings, plans, specifications, properties and facts provided by the Customer.

3.4 If there are any errors or omissions in any information, instructions, reports, drawings, plans, specifications, properties or facts provided by the Customer to the Supplier, the Supplier will, in addition to the Supplier's other rights under these T&Cs or at law, be entitled to vary the Price.

3.5 The Customer must ensure the specifications and properties of Goods and/or Services stated in any Order by the Customer will be fit for the intended purpose of the Goods and/or Services.

3.6 The Customer will be responsible for the quantity of any Goods and/or Services in any Order and the Supplier will not have any liability to the Customer if there is any excess or shortfall of the Goods and/or Services for the intended purpose.

3.7 The Customer must, at the Customer's expense, obtain all approvals, authorisations, permits, consents, determinations and licences which are necessary for and incidental to the supply of the Goods and/or Services and supply copies to the Supplier

3.8 The Customer may request modifications as to the amount, scope and/or nature of the Goods and/or Services to be supplied by a written change request. The Customer may also request modifications, including but not limited to drawings, models, instructions, specifications, quantities, method of shipment, packing, place of delivery or delivery dates for the Goods. If, in the opinion of the Supplier, any modification will affect the agreed fixed price and/or time of delivery, the Supplier will notify the Customer thereof in writing and will not be obligated to perform any modification unless agreed to by the Supplier. The Customer shall confirm that such change is authorised and accepted by continuing to engage the Supplier to provide the Goods and/or Services.

4. Price

4.1 Unless otherwise agreed by the Supplier in writing:

(a) the Price will be the Supplier's list price on the date of despatch of the Goods and/or Services and is subject to variation (whether before or after the acceptance of an Order or before or after the formation of a Contract or during the term of a Contract);

(b) the Supplier may invoice the Customer for Goods and/or Services on the date the Supplier supplies the Goods and/or Services; and

(c) the Price is exclusive of any delivery charges, any duties charges or taxes and exclusive of GST and The Supplier may charge, and the Customer must pay, in addition to the Price, any other fees, charges and surcharges that the Supplier notifies to the Customer from time to time.

4.2 The Customer must not withhold, make deductions from, or set-off, payment of any money owed to the Supplier for any reason.

4.3 If the Customer fails to pay the amount to the Supplier when it is due the Supplier will have the following rights in addition to any other rights it may have:

(a) To charge interest on the amount due at the maximum legal rate;

(b) To suspend the provision of Goods and/or Services to the Customer until all amounts due have been received; and

(c) To terminate the Contract.

The Customer must reimburse the Supplier for the full amount of any bank or other fees associated with any dishonoured payments or cheques and any legal, debt recovery or other expenses incurred by the Supplier associated with any action by the Supplier to recover money from the Customer.

5. Delivery of Goods and/or Services

5.1 If the Supplier agrees to deliver Goods, the Supplier:

(a) will charge delivery charges, demurrage, waiting time and other charges in the Supplier's price list or otherwise nominated by the Supplier from time to time;

(b) will endeavour to deliver the Goods to the Delivery Address on the Delivery Date; and

(c) may charge further delivery charges if the Customer is unable to receive delivery of the Goods at the Delivery Address or on the Delivery Date or in accordance with any other delivery arrangements.

5.2 The Supplier will only deliver Goods during the Supplier's usual business hours unless the Supplier agrees otherwise in writing.

5.3 The Supplier will not be liable for any delay in the delivery of Goods and/or Services to the Delivery Address and the Delivery Date may be extended by the Supplier for a reasonable time in accordance with clause 5.4.

5.4 In the event the Customer requests a delay in completion and delivery of the Goods and/or Services or any part thereof for any reason, then provided that all required progress payments are made by the Customer in full on the due date, the Supplier may agree upon any cost and/or scheduling impact of such delay, with such costs to be added to the account of the Customer. Any delay period beyond thirty (30) days after original scheduled shipment date shall require the Customer to risk of loss of such Goods, thereafter to make arrangements for storage of such Goods with the Supplier or other party.



6. Risk

- 6.1 If the Supplier agrees to deliver Goods, the risk in the Goods will pass to the Customer, and the Customer will be deemed to have accepted the Goods, immediately when the Goods are delivered to the Delivery Address regardless of whether there is anyone at the Delivery Address at the time of delivery.
- 6.2 If the Customer agrees to collect the Goods, the risk in the Goods will pass to the Customer, and the Customer will be deemed to have accepted the Goods, immediately when the Goods are moved by the Customer (or any third party on behalf of the Customer) and/or placed on any vehicle or means of conveyance.

7. Title

- 7.1 The Customer will not receive title to Goods until payment of the Price and any other amounts payable to the Supplier has been received in full and cleared through the Supplier's nominated bank account.
- 7.2 Until title in the Goods passes to the Customer in accordance with these T&Cs, the Customer:
- (a) will be only a bailee of the Goods;
 - (b) must ensure the Goods are kept separate and identifiable from other goods;
 - (c) must not grant any charge over, or interest in, the Goods to any third party;
 - (d) must return any Goods to the Supplier immediately on request;
 - (e) authorises the Supplier or any agent of the Supplier to enter any land and premises owned, occupied or controlled by the Customer where the Goods are located and take possession of the Goods; and
 - (f) must hold the proceeds from any sale or disposal of the Goods on trust for the Supplier,
- and the Supplier may repossess, retain, deal with and/or sell the Goods as the Supplier determines in the Supplier's absolute discretion.
- 7.3 The Supplier may, for the purposes of exercising the Supplier's rights under clause 7.2, enter any premises owned, occupied or controlled by the Customer and remove the Goods including but not limited to by detaching or unfixing the Goods from any goods or land to which the Goods are attached or fixed.

8. Credit and Personal Property Securities

- 8.1 The Customer must make full payment of the Price and any other amounts payable to the Supplier before the Supplier supplies Goods and/or Services to the Customer unless the Supplier has granted credit terms to the Customer in which case the Customer must make full payment of the Price and any other amounts payable to the Supplier within 30 days after the date on which the Supplier supplied its invoice to the Customer (or such alternative period agreed by the Supplier in writing).
- 8.2 If the Supplier grants credit terms to the Customer, then to secure the punctual payment of all amounts owed by the Customer to the Supplier, the Customer grants to the Supplier:
- (a) a security interest (as defined under the PPSA) over all present and after-acquired property of the Customer in relation to which the Customer can be a grantor of a security interest under the PPSA, whether or not the Customer has title to the property; and
 - (b) a fixed charge over all present and after-acquired property of the Customer in relation to which the Customer cannot be a grantor of a security interest under the PPSA.
- 8.3 The Customer agrees and acknowledges the Supplier may (without limiting the Supplier's other rights under these T&Cs, at law or otherwise) lodge caveats over the Customer's property and take any other action to secure and enforce the Supplier's security under clause 8.2.

9. Force Majeure

The Supplier will not be liable to the Customer for any failure to perform, or delay in performing, the Supplier's obligations under these T&Cs if the failure or delay is due to any cause beyond the Supplier's reasonable control and if any such failure or delay continues for a period of 14 days the Supplier may terminate any affected Contract.

10. Confidential Information and Intellectual Property

- 10.1 The Customer will not use, or disclose, any information relating to the Supplier or any related entity of the Supplier including but not limited to any information relating to any business, products, markets, operations, processes, techniques, technology, forecasts, strategies or any other matter, disclosed to the Customer.
- 10.2 All Intellectual Property Rights in all designs, drawings, technical information and documents created by the Supplier in relation to the Goods and/or Services will remain with the Supplier and will not be assigned to the Customer and no supply of Goods and/or Services to the Customer will grant to the Customer any Intellectual Property Rights in respect of the Goods and/or Services or such designs, drawings, technical information or documents.
- 10.3 If the Supplier supplies any designs, drawings, technical information or documents to the Customer as part of the Goods and/or Services, the Supplier grants the Customer a non-exclusive, non-transferrable, right to use the designs, drawings, technical information and documents strictly and only for the purposes of the Customer's use of the Goods and/or Services.
- 10.4 The Customer warrants that the Supplier's use of any designs, instructions or documents provided by the Customer to the Supplier will not infringe the Intellectual Property Rights of any other party.

11. Security

The Supplier will not be required to provide a bank guarantee or any other form of security and the Customer will not be entitled to retain any retention money from the Price for any reason.

12. Warranties

- 12.1 "Non-conformance" means failure to comply with, or failure to operate due to non-compliance with, applicable The Supplier drawings or having defects in workmanship or material. Normal wear and tear, erosion, corrosion and the need for regular overhaul and periodic maintenance do not constitute a Non-conformance.
- 12.2 The Supplier warrants at time of delivery to the Customer its Goods will comply with applicable Supplier's drawings and will be free from defects in workmanship and material. The Supplier's obligations under this warranty shall expire eighteen (18) months after delivery.
- 12.3 The Supplier warrants that the Services shall be performed in accordance with industry practices. The Supplier's warranty obligation for Services shall expire six (6) months after completion of the Services.
- 12.4 The Customer must notify the Supplier in writing during the defects liability periods set out in clauses 12.2 and 12.3 above of a Non-conformance and, within 30 calendar days of discovery of the Non-conformance.
- 12.5 All Goods repaired or replaced will be warranted only for the unexpired portion of the original defects liability period.
- 12.6 The Supplier excludes all express and implied conditions and warranties in relation to the Goods and/or Services except those conditions or warranties that cannot be excluded by law and the Supplier's liability under any such conditions or warranties is limited during the defects repair period to, at the Supplier's option, arranging to replace or repair the Goods and/or the outcome of the Services or resupplying the Goods and/or Services. All Goods repaired or replaced will only be warranted for the unexpired portion of the original defects liability period.
- 12.7 Nothing in these T&Cs are intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 (Cth) or any Fair Trading Act except to the extent permitted by such Acts.

13. Liability

- 13.1 The Supplier's liability for any Liability or Claim in relation to these T&Cs, any Contract, and any supply of Goods and/or Services (whether under statute, contract, tort, negligence or otherwise) will be limited to the amount of the Price paid by the Customer to the Supplier.
- 13.2 The Supplier will not be liable to the Customer for any Liability or Claim of any kind arising directly or indirectly (whether under statute, contract, tort, negligence or otherwise) in relation to any indirect or consequential loss (including but not limited to any loss of actual or anticipated profits, revenue, savings, production, business, opportunity, access to markets, goodwill, reputation, publicity, or use) or any remote, abnormal or unforeseeable loss or any similar loss whether or not in the reasonable contemplation of the parties.



14. Release and Indemnity

The Customer indemnifies the Supplier, its Related Body Corporates and each member of the Supplier's Personnel and must keep them indemnified from and against any Liability or Claim including but not limited to those arising directly or indirectly in relation to any one of more of the following:

- (a) the accuracy of all information provided by the Customer to the Supplier in relation to the Services, the Delivery Address or any other matters;
- (b) the Customer's breach of these T&Cs or any Contract;
- (c) the negligence or wilful misconduct of the Customer or any member of the Customer's Personnel;
- (d) the Supplier or any member of the Supplier's Personnel delivering the Goods in accordance with the Customer's instructions including but not limited to entering the Delivery Address;
- (e) damage to the property of the Customer or any third party during any delivery of Goods;
- (f) any spillage, breakage or contamination of Goods during any transport or delivery;
- (g) the Goods and/or Services not being fit for any particular purpose and any tests in relation to Goods and/or Services;
- (h) the Customer or any member of the Customer's Personnel directly or indirectly causing any delay in the supply of any Goods and/or Services or refusing to accept any delivery or purporting to cancel any Order or Contract;
- (i) the Supplier having to resupply the Goods and/or Services, or undertake any rework, as a result of the actions or omissions of the Customer or any third party; and
- (j) any proceedings, claims and demands in relation to any secured property.

15. Termination

15.1 The Supplier may immediately terminate, or suspend the performance of, any Contract and the Customer must immediately pay any money owed to the Supplier if:

- (a) the Customer breaches a term of these T&Cs or any Contract and does not remedy the breach within 7 days of receiving a notice from the Supplier requiring the Customer to do so;
- (b) the Customer breaches a term of these T&Cs or any Contract which is not capable of remedy; or
- (c) an Insolvency Event arises in relation to the Customer.

16. Definitions

In these T&Cs:

"Claim" means any actual, contingent, present or future claim, demand, action, suit or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether direct or indirect, and whether in contract, tort (including but not limited to negligence) or otherwise;

"Contract" means a contract formed as a result of the acceptance of an Order by the Supplier;

"Corporations Act" means the Corporations Act 2001 (Cth);

"Customer" means the customer set out in any quotation, offer or other document provided by the Supplier (or, in the absence of such information, the customer who placed the Order);

"Delivery Address" means the address for the delivery of the Goods and/or Services in a Contract;

"Delivery Date" means the date for the delivery of the Goods and/or Services in a Contract;

"Goods" means the goods in a Contract and includes all equipment and parts manufactured by the Supplier;

"Insolvency Event" means any of the following, or any analogous, events:

- (a) the Customer disposes of the whole or any part of the Customer's assets, operations or business other than in the ordinary course of business;
- (b) the Customer ceases, or threatens to cease, carrying on business;
- (c) the Customer is unable to pay the Customer's debts as the debts fall due;
- (d) any step is taken by a mortgagee to take possession or dispose of the whole or any part of the Customer's assets, operations or business;
- (e) any step is taken for the Customer to enter into any arrangement or compromise with, or assignment for the benefit of, the Customer's creditors or any class of the Customer's creditors; or
- (f) any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator of the whole or any part of the Customer's assets, operations or business;

"Intellectual Property Rights" means any present or future rights conferred by statute, common law or equity in any part of the world in relation to any confidential information, copyright, trade marks, service marks, designs, patents, circuit layouts, plant varieties, business names, domain names, inventions, trade secrets or other results of intellectual activity in any industrial, commercial, scientific, literary or artistic fields;

"Liability" means any loss, liability, cost, payment, damages, debt or expense (including but not limited to reasonable legal fees);

"Order" means any written or verbal order by the Customer to the Supplier for Goods and/or Services;

"Personnel" means any employee, servant, contractor, subcontractor, agent, partner, director or officer of a party;

"PPSA" means Personal Property Securities Act 2009 (Cth);

"Price" means the price of the Goods and/or Services as nominated by the Supplier from time to time;

"Services" means the services in a Contract and any services associated with the Goods including all work, direction of work, technical information or technical consulting and advice or other services furnished by the Supplier to the Customer and may support such activities as the installation, testing, alignment, startup, operation, repair and maintenance of the Goods;

"Supplier" means the entity that accepts the Order to supply Goods and/or Services to the Customer; and

"T&Cs" means these Terms and Conditions of Supply.

17. Miscellaneous

17.1 The parties agree:

- (a) no Contract will create any partnership, joint venture, agency or relationship of employment between the parties;
- (b) these T&Cs or any Contract may only be amended with the Supplier's express written agreement;
- (c) any waiver by the Supplier must be express and in writing;
- (d) the Supplier's rights under these T&Cs or any Contract do not exclude any other rights of the Supplier;
- (e) in the event of any dispute, the Supplier's records will be conclusive evidence;
- (f) the actions of any person claiming to have the Customer's authority will bind the Customer to the extent permitted by law;
- (g) if any provision of these T&Cs or any Contract is unenforceable, the provision will be severed and the remaining provisions will continue to apply;
- (h) the Customer must immediately provide written notice to the Supplier if there is any change in the persons having the effective control of the Customer;
- (i) the Supplier may assign any rights or benefits under any Contract or these T&Cs or any Contract to any third party;
- (j) the Customer may only assign any rights or benefits under any Contract or these T&Cs or any Contract with the Supplier's prior written consent; and
- (k) these T&Cs and any Contract will be governed by the laws of, and the parties submit to the jurisdiction of the courts of, Western Australia.

17.2 In these T&Cs:

- (a) the headings will not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) any other grammatical form of a word or expression defined in these T&Cs has a corresponding meaning;
- (d) a reference to a document includes the document as novated, altered, supplemented or replaced;
- (e) a reference to a party includes the party's executors, administrators, heirs, successors in title, permitted assigns and substitutes;
- (f) a reference to a person includes a natural person, body corporate, partnership, trust, association or any other entity;
- (g) a reference to a statute, ordinance, code or law includes regulations, rules and other instruments under the statute, ordinance, code or law and any consolidations, amendments, re-enactments or replacements;
- (h) a word or expression defined in the Corporations Act has the meaning given to the word or expression in the Corporations Act;
- (i) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
- (j) any agreement, representation, warranty or indemnity by two or more parties binds those parties jointly and severally;
- (k) any undertaking by a party not to do any act or thing will be deemed to include an undertaking not to permit or suffer the doing of that act or thing;
- (l) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these T&Cs; and
- (m) if a day on or by which an obligation must be performed or an event must occur is not a business day, the obligation must be performed or the event must occur on or by the next business day.