

The **Supplier** agrees to supply the **Goods** requested by the **Customer** on the terms and conditions set out below. Words in *ITALICS* are defined at clause 32.1 below.

## 1. Quotations, Orders, Acceptance & Contracts

- 1.1 Clauses 2.3, 3.2, 6.2, 6.8, 10.6, 23.3(c), 27.1, 29.1 and 30.1 shall apply to the *Agreement* unless or to the extent the *Quotation* or *Order* expressly specifies otherwise.
- 1.2 The **Customer** acknowledges that the submission of a *Quotation* by the **Supplier** is not an offer the acceptance of which will give rise to a contract.
- 1.3 An *Order* in relation to a *Quotation* or offer to enter into an *Agreement* may be made by the **Customer** verbally or in writing.
- 1.4 An *Order* or offer is accepted when the **Customer** receives from the **Supplier** an acceptance of the *Order*:
  - (a) by email or mechanised document from the **Supplier**,
  - (b) otherwise in writing, or,
  - (c) if no written acceptance of the *Order* is received, verbal acceptance or delivery of the **Goods**; whichever occurs first ("**the Order Acceptance**").
- 1.5 When an *Order* or offer is accepted by an *Order Acceptance Agreement* will be made and wholly documented by (in descending *Order* of precedence) the *Quotation*, any specific terms agreed in writing and set out in the *Order* and these terms and conditions, which documents shall constitute the entire *Agreement* and will supersede all prior negotiations, proposals and correspondence between the parties.
- 1.6 Despite the **Customer** at any time providing, referring to, submitting or otherwise using or purporting to use any standard form terms and conditions other than these terms and conditions, such terms and conditions will not form part of, or be incorporated into, the *Agreement*.

## 2. Supply of Goods

- 2.1 The **Supplier** shall carry out and complete supply of the **Goods** in accordance with the *Agreement*. The **Customer** and the **Supplier** agree that the items referred to as *Exclusions* in the *Quotation*, if any, are excluded from the *Agreement*.
- 2.2 The **Supplier** warrants that:
  - (a) it holds all licenses, if any, required to supply the **Goods**, and
  - (b) the **Goods** will be supplied in a proper manner and in accordance with the *Contract Documents*.
- 2.3 The **Customer** acknowledges and agrees that:
  - (a) the *Contract Price* (and any other money payable to the **Supplier** under this *Agreement*) do not include any taxes, freight, handling, duty or other similar charges of which will be the sole responsibility of the **Customer**, and
  - (b) unless specifically agreed in writing by the **Supplier**, the **Goods** are not intended for and will not be used in life support systems, human implantation, nuclear facilities or systems or any other application where a failure of the **Goods** could lead to loss of life or catastrophic property damage; and
  - (c) the performance of any value added service to the **Goods** may void the manufacturer's warranty and render the **Goods** unreturnable. Orders incorporating such services are unable to be cancelled and the **Goods** unable to be returned; and
  - (d) the **Supplier** acts as a supplying agent only for all **Goods**. Any insolvency event in relation to a manufacturer which disrupts the supply of the **Goods**, renders the **Goods** no longer serviceable, maintainable, supported or replaceable is at the sole risk of the **Customer** including any prepayments made to the manufacturer by the **Supplier** on behalf of the **Customer** which are held by any administrators, liquidators or other insolvency parties and outside the control of the **Supplier**.
- 2.4 The **Supplier** shall not be required to commence the supply the **Goods** until the **Customer** has paid the *Deposit*, if any, in accordance with clause 3.2.
- 2.5 Subject to clauses 2.4 and 11, the **Supplier** shall supply the **Goods** within a reasonable time and as far as reasonably possible by the date for completion specified in the *Quotation*, if any.

## 3. Contract Price & Deposit

- 3.1 The **Customer** shall pay to the **Supplier** the *Contract Price* and other money that becomes payable under the *Agreement* (without any set off) in the manner and at the times stated in the *Agreement*.
- 3.2 The **Customer** shall pay to the **Supplier** the *Deposit* specified in the *Quotation*, if any, within seven (7) days of the *Order Acceptance*.

## 4. Shipping & Preferred Carrier

- 4.1 In the absence of any prior written agreement by the **Supplier**, the **Supplier** is entitled to select and utilise its preferred carrier/shipping agent, at its absolute discretion, in relation to the supply of the **Goods**.

## 5. Accuracy of Contract Documents

- 5.1 The party responsible for the preparation of a *Contract Document* warrants that it is accurate and correct.
- 5.2 In the event of any inconsistency between the *Contract Documents*, or any detail not being given, the **Supplier** shall give notice to the **Customer** detailing the problem. The **Customer** must within two (2) *Business Days* of receiving such notice give written instructions as to how the **Supplier** is to proceed with the supply of **Goods**.
- 5.3 In the event that the **Customer** refuses or fails to give written instructions to the **Supplier** within two (2) *Business Days* of a notice pursuant to Clause 5.2, the **Customer** authorises the **Supplier** to determine the required detail necessary to resolve the error, ambiguity or inconsistency, however, the **Supplier** shall not be obliged to act under that authority.
- 5.4 If the required detail, as determined by the **Customer** or the **Supplier** necessitates a change to the scope of the supply, that change is deemed to be a *Variation*.

## 6. Delivery & Inspection of Goods

- 6.1 Delivery of the **Goods** is taken to occur when:
  - (a) the **Supplier** or the **Supplier's** nominated carrier delivers the **Goods** to the *Site* or address or third party nominated by the **Customer** even if the **Customer** is not present at the address, or
  - (b) the **Customer** or its nominated carrier takes possession of the **Goods**.
- 6.2 The cost of delivery is payable by the **Customer** in addition to the *Contract Price*.
- 6.3 The **Supplier** shall make reasonable efforts to deliver the **Goods** to the **Customer** or its designated agent in accordance with any agreement between the parties, or in the absence of any specific agreement, within a reasonable time, but shall not be liable for:
  - (a) any failure to deliver or delay in delivering the **Goods** for any reason,
  - (b) any damage or loss due to unloading or packaging (unless risk in the **Goods** had not passed to the **Customer** at the relevant time),
  - (c) any damage to property caused upon entering premises to deliver the **Goods**, unless caused by the **Supplier's** negligent act or omission.
- 6.4 The **Customer** shall accept delivery of the **Goods** even if late. In the event that the **Customer** fails to take delivery of the **Goods** at the time of delivery the **Customer** shall reimburse the **Supplier** for any costs incurred by the failure and the **Supplier** shall be entitled to charge a reasonable fee for redelivery and/or storage of the **Goods**.
- 6.5 The **Customer** must inspect the **Goods** on delivery. The **Customer** must notify the **Supplier** in writing within seven (7) days of delivery and setting out full details of all relevant matters if:
  - (a) the **Goods** are damaged, faulty or defective in any way,
  - (b) the **Goods** do not comply with any description by which they were sold and/or specified to in the *Quotation*, or
  - (c) there is any discrepancy in quantity.
- 6.6 The **Customer** must notify the **Supplier** in writing of any other defect in the **Goods** as soon as reasonably possible after any such defect becomes apparent.
- 6.7 Where a notice is given under clauses 6.5 or 6.6 the **Customer** shall allow the **Supplier** to inspect the **Goods**.
- 6.8 Notwithstanding any other clause, where the **Goods** or any part of the **Goods** are second hand, the **Supplier** makes no warranty in relation to the quality or suitability of the second hand **Goods** for any purpose and the **Customer**:
  - (a) acknowledges that it has had a reasonable opportunity to inspect the second hand **Goods** prior to delivery, and
  - (b) accepts the second hand **Goods** with any faults, damage and/or missing parts or components.

## 7. Passing of Risk

- 7.1 The risk in the **Goods** will pass to the **Customer**:
  - (a) where the supply includes the installation of the **Goods** or any particular **Goods**, upon completion of that part of the supply that relates to the installation or each installation, and
  - (b) in all other cases, upon the earlier of: (i) the delivery of the **Goods** to the **Customer** or its agent (including all risks associated with unloading), and (ii) the passing of title to the **Goods** to the **Customer**.
- 7.2 Notwithstanding clause 7.1(a), if the **Customer** directs the **Supplier** to deliver the **Goods** to an unattended location the **Goods** shall be left at the **Customer's** sole risk and responsibility. In the event that such **Goods** are lost, damaged or destroyed the replacement of the **Goods** shall be at the **Customer's** expense.

- 7.3 Where the **Supplier** retains ownership pursuant to clause 8 of **Goods** in respect of which risk has passed to the **Customer**, the **Customer** must maintain adequate insurance in relation to the **Goods** and provide evidence of such insurance to the **Supplier** on request.

## 8. Retention of Title

- 8.1 Notwithstanding the delivery of **Goods**, until the **Customer** has paid all monies payable to the **Supplier** under the *Agreement* in cleared funds:
  - (a) the legal and equitable title to the **Goods** will remain with the **Supplier**;
  - (b) a fiduciary relationship will exist between the **Customer** and the **Supplier**; and
  - (c) the **Customer** agrees to hold the **Goods** as bailee for the **Supplier** and keep the **Goods** separate and in good condition.
- 8.2 Unless the **Goods** have become fixtures, until ownership of the **Goods** passes to the **Customer**:
  - (a) the **Customer** shall not charge or grant any encumbrance over the **Goods**,
  - (b) the **Customer** must return the **Goods** to the **Supplier** on request, and
  - (c) the **Supplier** may without demand retake possession of the **Goods**.
- 8.3 For the purposes of recovering possession of the **Goods** and without limiting the generality of this clause 8, the **Customer** irrevocably authorises and licenses the **Supplier** and its servants and agents to enter any premises where the **Supplier** believes the **Goods** may be stored and to take possession of the **Goods**.

## 9. Tax Invoices

- 9.1 The **Supplier** may issue a *Tax Invoice* in respect of **Goods** or services supplied by the **Supplier** on or after:
  - (a) the dates, periods or milestones specified in the *Quotation*, if any,
  - (b) the date of delivery of the **Goods** or any part of the **Goods**, and
  - (c) the 1<sup>st</sup> and last days of each calendar month in which any **Goods** or services were supplied.
- 9.2 The **Supplier** may serve a *Tax Invoice* on the **Customer** by any method that it is entitled to give notice under the *Agreement*.
- 9.3 The **Customer** must pay the *Contract Price* progressively as claimed by the **Supplier** within seven (7) days, or such other period as specified in the *Quotation*, of service of a *Tax Invoice* on the **Customer**.

## 10. Variations

- 10.1 A *Variation* occurs if:
  - (a) the *Agreement* deems a *Variation*,
  - (b) the **Customer** requests the **Supplier** to perform a *Variation* and subsequently the **Supplier** performs the *Variation* in accordance with the **Customer's** direction, or
  - (c) the **Customer** and the **Supplier** agree in writing to a *Variation*, including *Agreement* as to the price of the *Variation*.
- 10.2 The price of a *Variation* is payable progressively as the *Variation* is performed and is due at the same time as the next *Tax Invoice* after it is carried out unless a different time is agreed.
- 10.3 If the **Customer** has requested the **Supplier** to perform a *Variation* and the **Supplier** has provided the **Customer** with a cost proposal in respect of the *Variation*, unless the cost proposal is rejected by the **Customer** in writing within two (2) *Business Days* the amount of the cost proposal is deemed to be the price of the *Variation* for the purposes of clause 10.1(b).
- 10.4 If there is insufficient time to calculate the price of a *Variation*, or this *Contract* deems a *Variation*, the price of the *Variation* will be charged to the **Customer** at the **Supplier's** reasonable cost plus a *Profit Margin*.
- 10.5 There shall be a deemed *Variation* if:
  - (a) the requirements of any statutory or other *Authority* necessitate a change to the supply of **Goods**, such *Variation* being that change required to effect that change,
  - (b) additional supply is required, or the supply is required to be performed in a manner or using equipment not anticipated, due to the discovery of latent difficulties in the performance of the supply of **Goods** (including, without limitation those circumstances set out in clause 12.1),
  - (c) after the *Agreement* is made; (i) a statutory or other *Authority* introduces or increases any tax, charge, levy or other regulation or any requirement that affects the supply of **Goods** that causes any increase in the costs of the supply of **Goods**, or (ii) the **Supplier's** wages is affected by a change to an Industry Award.
- 10.6 The **Customer** acknowledges that the *Contract Price* has been agreed on the basis of the **Supplier** performing the supply of **Goods** during the **Supplier's** ordinary operating hours. The **Supplier** will be entitled to a *Variation* if the supply of **Goods** are required to be carried out outside the aforementioned working hours.
- 10.7 Where extra cost in materials, labour and overhead is occasioned to the **Supplier** by virtue of the acceleration of an agreed supply schedule or of the presence of conditions which could not reasonably have been anticipated by the **Supplier** the *Agreement* is deemed to have been varied and the *Contract Price* shall be adjusted accordingly.
- 10.8 Notwithstanding any other clause herein, the **Supplier** is under no obligation to carry out any deemed *Variation* or *Variation* requested by the **Customer**.

## 11. Manufacturer & Shipping Delays

- 11.1 The **Supplier** will not be responsible for, and accepts no liability whatsoever in relation to, any delay or failure to deliver on part of the manufacturer of the **Goods** or the **Supplier's** appointed carrier/shipping agent where such failure or delay is beyond the **Supplier's** reasonable control.

## 12. Acknowledgement of Possible Delays

- 12.1 The **Customer** acknowledges that completion of the supply of **Goods** may be suspended by the **Supplier** pursuant to clause 13 or delayed by any cause beyond the control of the **Supplier** including: (a) a *Variation* or a request by the **Customer** for a *Variation*; (b) an act of God, fire, explosion, earthquake or civil commotion; (c) shortages in supply of **Goods**; (d) an industrial dispute; (e) anything done or not done by the **Customer**; (f) government authority restriction or embargo; (g) the delay in the supply of **Goods** from third parties and manufacturers; (h) pandemic or epidemic; and (i) any other reason beyond the **Supplier's** reasonable control.
- 12.2 The **Supplier** shall not be liable for the failure to perform the supply of **Goods** or the *Agreement* to the extent and for so long as its performance is prevented or delayed without substantial fault or negligence by the **Supplier** because of a circumstance referred to in clause 12.1.
- 12.3 Where the costs of the supply of **Goods** has increased due to any delay beyond the control of the **Supplier**, there shall be a deemed *Variation* and the **Supplier** shall be entitled to a reasonable increase in the *Contract Price*.

## 13. Suspension

- 13.1 If the **Customer** is in breach of the *Agreement* the **Supplier** may suspend the carrying out of the supply of **Goods** and must promptly give to the **Customer** written notice of the suspension and details of the breach.
- 13.2 The **Supplier** must recommence the carrying out of the supply of **Goods** within a reasonable time after the **Customer** remedies the breach and gives the **Supplier** written notice of that fact.

## 14. Items On Loan

- 14.1 All tools, patterns, materials, drawings, specifications, data or equipment loaned by the **Supplier** to the **Customer**, or obtained by the **Customer** at a cost of the **Supplier** for the purposes of the *Order*, shall remain the **Supplier's** property. The **Customer** shall on completion of the *Order* or as otherwise directed surrender the same to the **Supplier** in good and serviceable condition (fair wear and tear excepted).

## 15. Hire of Equipment (if applicable)

- 15.1 This clause applies if the *Agreement* includes the hire of equipment to the **Customer**.
- 15.2 In this clause:
  - (a) "*Equipment*" means the equipment specified in the *Quotation* to be hired to the **Customer**;
  - (b) "*Hire Fee*" means the fee specified in the *Quotation* for the hire of the *Equipment*;
  - (c) "*Hire Start Date*" and "*Hire End Date*" mean the dates so specified in the *Quotation* or such other date as the parties agree in writing;
  - (d) "*Hire Period*" means the period commencing on the *Hire Start Date* and ending on the *Hire End Date*.
- 15.3 Subject to clause 15.9, the **Supplier** shall provide and the **Customer** shall take on hire the *Equipment* for the *Hire Period*
- 15.4 The **Customer** shall pay, at the same times as *Tax Invoices* are due and payable under the *Agreement*:
  - (a) the *Hire Fee* to the **Supplier** progressively during the *Hire Period*,
  - (b) the **Supplier's** costs of delivering and/or collecting the *Equipment* to or from any site,
  - (c) the **Supplier's** costs of repairing any damage to the *Equipment* for which the **Customer** is responsible, and
  - (d) the full replacement cost of the *Equipment* where the **Customer** fails or refuses to return the *Equipment* or make the *Equipment* available for collection.
- 15.5 The **Customer** warrants that it:
  - (a) has inspected or had a reasonable opportunity to inspect the *Equipment* prior to placing the *Order*,
  - (b) has not relied on any representation by the **Supplier** in relation to the suitability of the *Equipment* for any purpose,

- (c) will only use the *Equipment* in accordance with the recognized methods and use for equipment of the type, and
- (d) will keep the *Equipment* clean and in good working order and repair and will comply with any maintenance schedules referred to in the *Quotation*.
- 15.6 Except with the *Supplier's* prior written consent, the *Customer* shall:
- (a) keep *Equipment* at the location at which it was delivered or at which its intended use was disclosed to the *Supplier* prior to collection and not remove the *Equipment* from that location,
- (b) not make any replacement, alteration or addition to the *Equipment*, and
- (c) keep the equipment in the *Customer's* sole possession and control.
- 15.7 The *Customer* agrees to use, operate and possess the *Equipment* at the *Customer's* risk. The *Customer* shall be fully responsible for and liable to the *Supplier* for any loss or damage to the *Equipment* howsoever occasioned, except fair wear and tear. The *Customer* shall notify the *Supplier* in writing as soon as practicable upon it becoming aware of any loss or damage to the *Equipment* in excess of fair wear and tear.
- 15.8 Title to the *Equipment* shall at all times vest in the *Supplier*. The *Supplier* shall be entitled to inspect the *Equipment* at any time on reasonable notice.
- 15.9 In the event of any default or termination of the *Agreement* the *Customer* shall return the *Equipment* to *Supplier* on demand.

## 16. Indemnity

- 16.1 The *Customer* irrevocably indemnifies the *Supplier* in relation to any loss, damage, claim, expense, or cost the *Supplier* suffers in relation to any breach of this agreement by the *Customer*.

## 17. Dispute Resolution

- 17.1 The parties must attempt to resolve any dispute or claim arising out of or under the *Agreement* by negotiation in good faith before either party commences any litigation in relation to the dispute or claim. Accordingly, if a party considers that a dispute or claim has arisen under the *Agreement* they must give written notice to the other party adequately setting out and providing details of the dispute.
- 17.2 The *Supplier* and the *Customer* must meet within ten (10) *Business Days* of the giving of a notice pursuant to clause 17.1 to attempt to resolve the dispute or claim or to agree on methods of doing so. The parties must be represented at the meeting by a person with authority to agree to a resolution of the dispute.
- 17.3 If the dispute is resolved the parties must write down the resolution and sign it.
- 17.4 The parties agree that anything done or said in the negotiations can not be revealed in any other proceedings.
- 17.5 Nothing in this clause prevents either party from commencing urgent injunctive or interlocutory proceedings in a competent Court.

## 18. Default & Termination of Contract

- 18.1 Without limiting clause 18.2, a party may terminate the *Agreement* if:
- (a) the other party is in default of the *Agreement*,
- (b) the non-defaulting party has served notice in writing on the party setting out details of the default and stating that the party will be entitled to terminate the *Agreement* unless the default is remedied within a specified time of not less than 14 days,
- (c) the party fails to remedy the default within 14 days of receiving a notice under clause 18.1(b), or such longer period as may be specified in the notice, and
- (d) the non-defaulting party serves written notice of termination whilst the default remains unsatisfied.
- 18.2 If the *Customer* fails to pay any money under the *Agreement* within seven (7) days of the due date for payment:
- (a) the *Supplier* may terminate the *Agreement* by notice in writing to the *Customer*,
- (b) the *Supplier* shall be entitled to interest on the outstanding amount at the rate of 2.5% per calendar month calculated daily from the due date for payment and compounding monthly on the first day of each month until payment is received,
- (c) may without notice sell any *Goods* that the *Supplier* has recovered pursuant to clause 8 on such terms and in such manner as it determines and, after deducting all expenses incurred, shall offset such proceeds from the balance owing from the *Supplier*,
- (d) the *Customer* shall indemnify the *Supplier* from and against all costs and disbursements incurred or payable by the *Supplier* in connection with the recovery of monies owing by the *Supplier* (including, without limitation, legal fees on an indemnity basis, collection agency costs and bank dishonour fees), and
- (e) the *Supplier* may cancel all or any part of the supply of *Goods* in connection with any other contract or contracts made with the *Customer* to which these terms and conditions apply whereafter all amounts payable by the *Customer* to the *Supplier* shall become payable immediately.
- 18.3 The *Customer* agrees to pay to the *Supplier*, as genuine pre-estimate of the *Supplier's* costs:
- (a) a processing and handling fee of \$20.00 in respect of each payment made under the *Agreement* that is not in satisfaction, or in satisfaction of the balance, of a *Tax Invoice*, and
- (b) a default fee of \$50.00 in respect of any failure by the *Customer* to pay a *Tax Invoice* by the due date for payment or by the corresponding day of each subsequent calendar month until the *Tax Invoice* is paid in full.

## 19. Warranties & Representations

- 19.1 Subject to clause 2.2 and except as expressly provided to the contrary in the *Contract Documents*, all representations, warranties, guarantees and conditions in relation to the *Goods* (whether implied or otherwise) are hereby excluded to the maximum extent permitted by law.
- 19.2 If the *Customer* is aware (or should be aware) that the *Goods* are for a particular purpose or are required to possess particular or uniform characteristics, the *Customer* agrees to clearly specify that purpose or those characteristics in writing in the *Order*.
- 19.3 The *Customer* warrants that it has made its own enquiries in relation to the suitability of the supply of *Goods* and the *Goods* and has not relied on any representation made by the *Supplier* in relation to their suitability for any particular purpose.

## 20. Return of Goods

- 20.1 Subject to any applicable statute, unless the *Supplier* agrees otherwise in writing, the *Supplier* will only accept a return of the *Goods* if:
- (a) the *Customer* has complied with clauses 6.5 and 6.6,
- (b) the *Supplier* acting reasonably has agreed that the *Goods* are defective and not reasonably capable of repair,
- (c) the *Goods* are returned at the *Customer's* expense and within a reasonable time, and
- (d) the *Goods* are returned, as far as possible, in the same condition as the *Goods* were delivered.
- 20.2 If the *Supplier* agrees in its absolute discretion to accept the return of any non-defective *Goods*, the *Customer* shall:
- (a) indemnify the *Supplier* in relation to any freight expense, and
- (b) if required by the *Supplier*, pay handling fees of up to 10% of the price of the *Goods* returned.

## 21. Limitation of Liability

- 21.1 The *Supplier's* liability to the *Customer* (and any party claiming through the *Customer* against the *Supplier*) for any claim for loss or damage (including legal expenses), whether arising in contract, tort or otherwise, in connection with the *Agreement* shall be as follows:
- (a) where the liability relates to the supply of services, the *Supplier's* liability shall be limited to the lesser of the costs of: (i) supplying the services again, or (ii) payment of the costs of having the services supplied again, or
- (b) where the liability relates to the supply of *Goods*, the *Supplier's* liability shall be limited to the lesser of the cost of: (i) replacement of the *Goods* or the supply of equivalent *Goods*, (ii) repair of the *Goods*, (iii) payment of the costs of replacing the *Goods* or acquiring equivalent *Goods*, or (iv) payment of the costs of having the *Goods* repaired.
- 21.2 Notwithstanding any other term of the *Agreement* but subject to any applicable statute, the *Supplier* shall not be liable for any defect, fault or damage to the *Goods* of any nature whatsoever:
- (a) in respect of which notice was not provided in accordance with clauses 6.5 or 6.6, or
- (b) in circumstances where the manufacture of the *Goods* no longer exists, is currently under administration, in liquidation or subject to other insolvency proceedings,
- (c) replacement parts, components or software required to repair, remedy or rectify the *Goods* are no longer available, have been discontinued or no longer supported by manufacturer of the *Goods*,
- (d) resulting from or caused or contributed to in any way by:
- (i) The *Customer* failing to properly maintain or store the *Goods* after delivery,
- (ii) The *Customer* using the *Goods* for any purpose other than that for which the *Goods* were designed,
- (iii) The *Customer* continuing to use the *Goods* after any defect became apparent or ought reasonably to have become apparent,
- (iv) The *Customer* failing to follow any instructions or guidelines provided by the *Supplier* or the manufacturer of the *Goods*, or
- (v) Fair wear and tear or any accident or act of God.
- 21.3 If the *Supplier* did not manufacture the *Goods*, the *Supplier's* liability shall be limited to the lesser of the liability of the manufacturer of the *Goods* to the *Supplier* and the liability determined under clause 21.1(b).
- 21.4 Unless the *Quotation* contains an express warranty, the *Customer* acknowledges that the *Goods* supplied may exhibit variations in shade, colour, texture, surface and finish and may fade or change colour over time. The *Supplier* shall make reasonable efforts to match batches of products supplied and minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- 21.5 The *Supplier* shall not be liable for any indirect, special or consequential loss or damage of any nature whatsoever resulting from or caused in any way by the carrying out of the supply of *Goods* or supply of the *Goods*.
- 21.6 The *Supplier* will not be responsible for, or liable for and cost, damage, claim of loss in relation to the *Goods* not complying with the manufacturer's specifications, the performance or adequacy of any design or specification provided to the *Supplier* either by the manufacturer or the *Customer*.

## 22. Guarantee

- 22.1 In consideration for the *Supplier* entering into the *Agreement*, the *Guarantor* guarantees to the *Supplier* the performance by the *Customer* of all of the *Customer's* obligations under the *Agreement* including any *Variation*.
- 22.2 If the *Customer* does not pay any money due under the *Agreement* the *Guarantor* must pay that money to the *Supplier* on demand without deduction, set-off or counterclaim even if the *Supplier* has not tried to recover payment from the *Customer*.
- 22.3 Even if the *Supplier* gives the *Customer* extra time to comply with an obligation under the *Agreement* or does not insist on strict compliance with the terms of the *Agreement* the *Guarantor's* obligations will not be affected.
- 22.4 Where a payment made by the *Customer* or the *Guarantor* to the *Supplier* is set aside by law, the parties are restored to their respective positions prior to the payment being made and are entitled to exercise all rights which they had under the *Agreement*.
- 22.5 If there is more than one (1) *Guarantor*:
- (a) (a) this guarantee shall be binding on each of them jointly and severally, and
- (b) (b) the release by the *Supplier* of any *Guarantor* from this guarantee does not affect the liability of any other *Guarantor*.
- 22.6 The *Guarantor's* liability under this clause is continuing and unlimited.

## 23. Personal Property Security

- 23.1 In this clause 'amendment demand', 'attaches', 'financing statement', 'financing change statement', 'security agreement', 'security interest' and 'verification statement' have the meanings given to them by the *PPSA*.
- 23.2 The *Customer* and the *Guarantor*, if any, hereby charge the *Goods* and all of their respective personal property as security for the performance by the *Customer* of the *Customer's* obligations under the *Agreement*.
- 23.3 The *Customer* acknowledges and agrees that:
- (a) the *Agreement* constitutes a security agreement for the purposes of the *PPSA*, and
- (b) a security interest exists in all *Goods* (and their proceeds) previously supplied by the *Supplier* to the *Customer* (if any) and in all future *Goods* supplied (and their proceeds),
- (c) the *Customer* has received or will receive value as at the date of first delivery of the *Goods* (or any part of the *Goods*) and that the *Supplier* has not agreed to postpone the time the security interest attaches to the *Goods*, and
- (d) where the *Supplier* has rights in addition to those under Chapter 4 of the *PPSA*, those rights will continue to apply.
- 23.4 The *Customer* shall:
- (a) promptly sign all documents and provide any further information that the *Supplier* may reasonably require to register a financing statement or financing change statement in relation to a security interest granted to the *Supplier* under the *Agreement* or any other document required to be registered under the *PPSA*,
- (b) notify the *Supplier* in writing of any intention to change the *Customer's* business practices to include the sale or leasing of *Goods* of like kind to the *Goods* (or any part thereof) in the ordinary course of the *Customer's* business, and
- (c) on demand reimburse the *Supplier* for all costs and expenses incurred in registering a financing statement or financing change statement.
- 23.5 The *Customer* must not, without the *Supplier's* prior written consent:
- (a) register or permit to be registered a financing statement or financing change statement in relation to the *Goods* in favour of a third party, or
- (b) register or cause to be registered a financing change statement in respect of a security interest granted under the *Agreement*,
- (c) issue or permit any other person to issue an amendment demand to the *Supplier* unless all monies payable by the *Customer* under the *Agreement* have been received by the *Supplier* in cleared funds.
- 23.6 Any requirement under the *PPSA* on the part of the *Supplier* to give a notice to the *Customer* or any *Guarantor* shall not, to the extent that the requirement may be contracted out of (including, without limitation, under Section 115(1) of the *PPSA*), apply to the *Agreement*. Further, to the extent that the *Customer* and/or the *Guarantor* may waive the right to receive a notice under the *PPSA* (including, without limitation, notice in relation to a verification statement under Section 157(1) of the *PPSA*), the *Customer* and the *Guarantor* waives that right.
- 23.7 The *Customer* irrevocably authorises and licenses the *Supplier* to enter upon the *Customer's* property or premises, without notice, and without being in any way liable to the *Customer*, if the *Supplier* has cause to exercise any of the *Supplier's* rights under Section 123 of the *PPSA*, and the *Customer* shall indemnify the *Supplier* from any claims made by any third party as a result of such exercise.
- 23.8 The *Supplier* and the *Customer* agree to treat information of the kind referred to in Section 275(1) of the *PPSA* as confidential. Neither the *Supplier* or the *Customer* will disclose, send or make available any of the information referred to in Section 275(1) of the *PPSA* to any person except as required by law or the *Agreement*.
- 23.9 The *Supplier* and the *Customer* acknowledge and agree that clause 23.8 constitutes a confidentiality agreement pursuant to Section 275(6) of the *PPSA*.

## 24. Export/Resale Restrictions

- 24.1 The *Customer* acknowledges that the *Goods* may be subject to export or resale restriction or regulation and that the *Customer* will be responsible for complying with any such applicable laws, restrictions and regulations.
- 24.2 Any statement as to the *Goods* country of origin, Export Control Classification Number or compliance with any applicable law (including, without limitation, that *Goods* are lead free or RoHS Compliant) are the responsibility of the *Customer* to verify and the *Supplier* does not warrant any such conditions being true, accurate or correct. The *Customer* acknowledges and agrees that it uses such information at its own risk.
- 24.3 The *Customer* acknowledges and agrees that the *Goods*, software and/or technology purchased by the *Customer* may be subject to export, re-export or other restrictions under the laws of the country of the manufacturer of the *Goods*, the country of supply and country in which the *Customer* resides.
- 24.4 The *Customer* warrants that it will comply with all applicable laws, restrictions and regulations relating to the export and re-export of such *Goods*, software and/or technology including, without limitation, the *Customer* will not use, sell, export, re-export or incorporate the *Goods* directly or indirectly:
- (a) in relation to the development, production, design, stockpiling or use of chemical or biological weapons, nuclear programs, missiles, maritime nuclear propulsion projects,
- (b) for the use by military, police, intelligence agencies, space applications or any other organisation prohibited by applicable laws and regulations;
- (c) for use by military vessels, vehicles or aircraft,
- (d) for use in general purpose microprocessors for military end users or military applications, or
- (e) in relation to any other activity in violation of any UN Charter or embargo;
- except as expressly permitted under any applicable laws and regulations in relation to these items.

## 25. Intellectual Property

- 25.1 Where the *Supplier* has designed, drawn or developed unique and/or original designs or drawings in connection with the supply of *Goods* or any *Goods*, copyright in such designs or drawings shall vest in the *Supplier*.
- 25.2 The *Customer* warrants that the *Supplier* is entitled to use all documents and drawings provided by the *Customer* for the purposes of performing the supply of *Goods* and that such use will not infringe any third party's intellectual property rights.
- 25.3 The *Customer* shall indemnify the *Supplier* from and against all claims and all losses and damages incurred by the *Supplier* as a consequence of any claim against the *Supplier* for infringement of a third party's intellectual property rights in connection with the carrying out of the supply of *Goods* or supply of the *Goods* in accordance with a document that is; supplied by, prepared under the instruction of, or prepared from sketches provided by, the *Customer*.
- 25.4 Any software or other intellectual property included in, or relating to, the *Goods* is supplied by the manufacturer of the *Goods* and not the *Supplier*.
- 25.5 The *Supplier* makes no representation or warranty in respect of any intellectual property that is owned by the manufacturer of the *Goods* and makes no representation or warranty in relation to any such intellectual property. The *Customer* agrees to comply with all requirements in relation to intellectual property of any third party (including any requirement to enter into separate licence agreements and prohibitions against duplicating or disclosing the same) even if the *Supplier* has broken the seal on any shrink-wrapped software.

## 26. Subcontracting & Assignment

- 26.1 The *Supplier* may subcontract the whole or any part of the supply of *Goods* but remains responsible for all of the supply of *Goods*.
- 26.2 The *Supplier* may assign the *Agreement* to any person. In the event of the assignment the *Customer* may, if it has reasonable grounds to believe that the assignee will not comply with the *Agreement*, within seven (7) days of receiving notice of the assignment terminate the *Agreement* by 30 days written notice to the *Supplier* whereafter the termination will be effective unless the assignment is withdrawn.

## 27. Cancellation

- 27.1 Notwithstanding any other clause herein the *Supplier* may cancel any agreement to which these terms and conditions apply at any time before the supply of *Goods* are commenced or *Goods* delivered by giving written notice to the *Customer* whereafter any deposit or other amount paid by the *Customer* on account of the *Goods* shall become immediately repayable to the *Customer*. The *Supplier* shall not be liable for any consequential loss or damage in relation to any such cancellation.
- 27.2 If the *Customer* purports to cancel the *Agreement*, without limiting any other right available to the *Supplier*, the *Customer* shall be liable to the *Supplier* for any and all loss or damage suffered by the *Supplier* in connection with the cancellation including, without limitation, loss of profit in respect of the supply of *Goods* and supply of the *Goods* and/or loss of profits in respect of orders and opportunities foregone as a result of the scheduling of the supply of *Goods*.

**28. Privacy Act 1988 (Cth)**

- 28.1 Despite clause 1.5, this clause applies upon the making of an *Order* before and after any *Order Acceptance*.
- 28.2 The *Customer* and the *Guarantor*, if any, consent to the *Supplier* obtaining a Credit Report from a credit reporting agency in relation to the *Customer* and the *Guarantor* respectively for the purpose of:
- assessing the creditworthiness of the *Customer*, and
  - the collection of payments that are overdue in respect of commercial credit.
- 28.3 The *Customer* and the *Guarantor*, if any, agree that the *Supplier* may exchange information about the *Customer* and the *Guarantor* with those credit providers either named as trade referees by the *Customer* or named in a Credit Report issued by a credit reporting agency for the following purposes:
- to assess an application for commercial credit by the *Customer*,
  - to notify other credit providers of a default by the *Customer*,
  - to exchange information with other credit providers, where the *Customer* is in default with other credit providers, and
  - to assess the creditworthiness of the *Customer*.
- 28.4 The *Customer* and the *Guarantor*, if any, consent to the *Supplier* using any personal information collected by the *Supplier* for the following purposes or as required by law:
- the performance of the supply of *Goods* and/or supply of *Goods*,
  - the marketing of the supply of *Goods* or services by the *Supplier*,
  - the analysing, verifying and checking of the *Customer's* credit and/or payment status in relation to the performance of the supply of *Goods* and/or supply of *Goods*,
  - the processing of any payment instructions, direct debit facilities and/or credit facilities requested by the *Customer*, and
  - enabling the daily operation of the *Customer's* account and/or the collection of amounts outstanding in the *Customer's* account in relation to the performance of the supply of *Goods* and/or supply of *Goods*.
- 28.5 The *Supplier* may give information about the *Customer* and the *Guarantor* to a credit reporting agency for the following purposes:
- to obtain a consumer credit report about the *Customer* and/or the *Guarantor*, or
  - allow the credit reporting agency to create or maintain a credit information file containing information about the *Customer* and/or the *Guarantor*.

**29. GST**

- 29.1 The *Contract Price* and all other monies payable by the *Customer* pursuant to the *Agreement* are exclusive of *GST*.
- 29.2 If the *Supplier* incurs a liability to pay *GST* in connection with a supply to the *Customer* pursuant to the *Agreement*, the consideration that the *Customer* must pay to the *Supplier* for the supply is increased by an amount equal to the *GST* liability that the *Supplier* incurs in making the supply and the amount of the *GST* liability is payable at the same time and in the same manner as the consideration in respect of the supply is payable.
- 29.3 The *Supplier* shall provide the *Customer* with a tax invoice for any *GST* included in any payment made pursuant to the *Agreement*.

**30. Notices**

- 30.1 The parties agree that email shall be the primary method of contact and communication in relation to any matters arising under the *Agreement*.
- 30.2 A notice is deemed to have been given or serviced if the notice is:
- delivered by hand to the other party,
  - posted by ordinary prepaid mail to the other party's address (including a Post Office Box) stated in the *Quotation* or *Order* on the second *Business Day* following the date of posting, or
  - sent by facsimile transmission to the parties' facsimile number stated in the *Quotation* or *Order* upon receiving confirmation of delivery of the transmission, or
  - sent by email to the parties' email address stated in the *Quotation* or *Order* upon receiving confirmation of delivery of the email without error.

**31. General**

- 31.1 Payments may only be made by cash, bank cheque, electronic funds transfer or credit card (unless the *Supplier* agrees otherwise in relation to a payment). The *Customer* agrees to pay a surcharge equal to 2.5% in respect any payment made via credit card.
- 31.2 The *Customer* may not; (a) set off against or deduct from any monies payable under the *Agreement* any sums owed or claimed to be owed by the *Supplier* to the *Customer*, or (b) withhold payment of any *Tax Invoice* because the *Tax Invoice* or part of it is in dispute.
- 31.3 The *Agreement* embodies the whole agreement between the parties relating to the subject matter of the *Agreement* and supersedes any and all oral and written negotiations and communications by or on behalf of any of the parties.
- 31.4 The terms in the *Agreement* may not be varied, waived, discharged or released, except with the prior written consent of the parties.
- 31.5 No right under the *Agreement* is waived or deemed to have been waived in relation to any particular instance unless in writing and signed by the party waiving the right. A party does not waive its right under the *Agreement* by granting an extension of time or any other forbearance to another party.
- 31.6 The *Agreement* shall be governed by and constructed pursuant to the laws of the State of New South Wales. The parties irrevocably submit to the jurisdiction of the Courts of New South Wales in connection with any dispute relating to the *Agreement*. The parties further agree that the Court of competent jurisdiction located closest to the *Supplier's* principal place of business in New South Wales shall be the appropriate Court for the hearing of any claims in connection with this *Agreement*.
- 31.7 The parties agree that a construction of the *Agreement* that results in all provisions being enforceable is to be preferred to a construction that does not so result.
- 31.8 If, despite the application of clause 31.7, a provision of the *Agreement* is illegal or unenforceable:
- if the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are severed; and
  - in any other case, the whole provision is severed, and the remainder of the *Agreement* continues in force.

**32. Definitions & Interpretation**

- 32.1 In these terms and conditions:
- "*Agreement*" means the agreement between the *Customer* and the *Supplier* arising from the *Supplier's* acceptance of an *Order* from the *Customer*;
  - "*Authority*" means the Local Government, State or Federal Government, or any Government agency that has power to affect the supply of *Goods*;
  - "*Business Day*" means any day other than Saturdays, Sundays or public holidays;
  - "*Customer*" means the party named as the *Customer* or customer in the *Quotation*, or if there was no written *Quotation*, in the *Order*;
  - "*Contract Documents*" means these terms and conditions, the *Order*, the *Quotation*, the *Order Acceptance* and the plans (or measurements) and specifications, if any, specified in the *Quotation*;
  - "*Contract Price*" means the amount or rates stated as the price in the *Quotation*, or if there was no written *Quotation*, in the *Order*;
  - "*Exclusions*" means the exclusions described in the *Quotation*;
  - "*Goods*" means any equipment, *Goods* and other parts and components to be supplied by the *Supplier* as part of or in connection with the supply of *Goods* or otherwise described in the *Contract Documents*;
  - "*GST*" has the same meaning as given to it in the *A New Tax System (Goods and Services Tax) Act 1999*.
  - "*Guarantor*" means the person or persons who have signed the *Order* as *Guarantor* and includes their executors, administrators, successors and assigns;
  - "*Order*" means a work order or purchase order in writing issued by the *Supplier* in relation to a *Quotation*,
  - "*Order Acceptance*" is defined in clause 1.4.
  - "*PPSA*" means the *Personal Property Securities Act 2009* (Cth);
  - "*Profit Margin*" means a margin of 15% plus *GST* or such other margin specified in the *Quotation*.
  - "*Tax Invoice*" means both a tax invoice as defined in the *A New Tax System (Goods and Services Tax) Act 1999*;
  - "*Quotation*" means the proposal, if any, provided by the *Supplier* to the *Customer* in respect of the supply of *Goods* and/or the *Goods* to which the *Order* relates;
  - "*Site*" means the address at which the supply of *Goods* are to be carried out as specified in the *Quotation* or if there was no written *Quotation*, in the *Order* or the *Order Acceptance*;
  - "*Supplier*" means **Power Components (Australia) Pty Ltd (ACN 617 865 531)**, its successors, assigns, subsidiaries, affiliates and nominated related body corporates;
  - "*Variation*" means to vary the supply of *Goods* by; carrying out additional work, omitting any part of the supply of *Goods* or changing the scope of the supply of *Goods*.
- 32.2 In the *Agreement*, unless otherwise indicated by the context: (a) the singular includes the plural and vice versa; (b) a reference to one gender includes a reference to all other genders; (c) headings to clauses are included for the sake of convenience only and will not affect the interpretation of the clauses to which they relate; (d) references to any statute or statutory provision include that statute or statutory provision as amended, extended, consolidated or replaced by subsequent legislation and any *Orders*, regulations, instruments or other subordinate legislation made under the relevant statute; (e) the word person means and includes a natural person, a company, a firm or any other legal entity whether acting as a trustee or not; (f) the *Agreement* will bind each party's legal personal representatives, successors and assigns; and (g) where a party comprises two (2) or more persons the rights and obligations of such persons pursuant to the *Agreement* will ensue for the benefit of and bind each of them jointly and severally.