

OHM BIOMEDICAL ENGINEERING Services TERMS OF SUPPLY AND SALE

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires:

Agreement means these terms of sale for the quoting, sale and purchase of the Products, and includes the Quote (including any variation to a Quote) and Order Acceptance and all attachments or annexures, amendments, or variations to this Agreement or a Quote.

Consumer Guarantees means the consumer guarantees contained in the Australian Consumer Law, which is contained in Schedule 2 of the *Competition and Consumer Act 2010*.

Customer means any person or persons, company or companies or entities who accept a Quote and Order Products or persons acting on behalf of and with the authority of the Customer.

Defect means a material fault in the Products arising out of the manufacture of the Products or in the materials or components used in the manufacture of the Products that either existed at the time of Delivery or arise during the Warranty Period. Defect does not mean or include:

- (a) cosmetic blemishes or scratches apparent at the time of Delivery or that arise out of fair wear and tear during the Warranty Period;
- (b) a defect that arises out of, or is caused by, modifications to the Products that have been made without the express written consent of the Supplier;
- (c) a defect that arises out of, or is caused by, misuse, negligence or accident to the Products after Delivery; and
- (d) a defect that arises out of, or is caused by, the Customer failing to use or maintain the Products in accordance with the Manufacturer's recommendations.

Deliver or Delivery or Delivery means delivery of the Products to the Customer (if required as part of the Order) to the Delivery Address.

Delivery Address means the address to which the Supplier shall cause the Products to be Delivered specified by the Customer in the Quote.

Delivery Costs means all cost and expenses directly or indirectly arising of the Delivery of the Products to the Delivery Address.

Delivery Date means the approximate date for the Delivery of the Products as advised by the Supplier to the Customer.

Deposit means the deposit specified in the Quote or Order payable by the Customer in accordance with clause 4.

Disputant means a party to a Dispute.

Dispute means a dispute arising out of or related to the Products or the terms of this Agreement.

the Supplier means SASS Biomedical Engineering Services Pty Ltd Trading as OHM Biomedical Engineering Services (ACN 666 304 294)].

GST means Goods and Services Tax as defined under the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Intellectual Property includes but is not limited to all copyright and commercial-in-confidence trade secrets.

Initial Period means the 14 day period after a notice of a Dispute is given under clause 23.

Invoice means an invoice issued by the Supplier to the Customer.

Notice means a notice in writing including those sent by letter or email and delivered in accordance with this Agreement.

Order means the purchase order for the Products placed by the

Customer with the Supplier incorporating the terms of the Quote.

Order Acceptance means an acceptance of a Quote which incorporates the terms of the Quote and the terms of this Agreement and other information.

Other Instructions means the Customers additional instructions to the Supplier contained in the Order Acceptance.

Party or Parties means the parties to this Agreement as specified in the Order, and includes their lawful successors and assigns. Any reference to a party will include, where applicable, any subsidiary controlled by a Party or by the same persons who control that Party.

Payment Terms mean the terms upon which the Customer must pay the Purchase Price, including the payment of the Deposit specified in the Quote and if not in the Quote, in accordance with this Agreement.

Purchase Price means the amount payable by the Customer to the Supplier for the Products excluding GST and Delivery Costs (if any).

Quote means the document specifying the Purchase Price for the Products.

Services means maintenance

Warranty means the warranty given by the Supplier to the Customer in respect of the Products.

Warranty Period means the period commencing from Delivery until the date specified in the Warranty.

1.2 Interpretation

In this Agreement:

- (a) words importing any genders include all genders;
- (b) words importing the singular include the plural and vice versa;
- (c) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (d) a reference to a person includes anybody that is recognized by Law in the territory as such, whether as a natural person or a body corporate;
- (e) a reference to a party to this Agreement or another agreement or document includes the party's successors and permitted substitutes or assigns (and, where applicable, the party's legal representatives);
- (f) a reference to currency shall mean AUD exclusive of any taxes; and
- (g) a reference to legislation or regulations shall include all amendments and re-enactments.

1.3 Applicability

- (a) The terms of this Agreement apply to the Products supplied or to be supplied by the Supplier to the Customer pursuant to an Order. Unless expressly agreed to otherwise by the Supplier in writing, this Agreement overrides and supersedes any agreement or understanding between the parties and any other documents, including any terms and conditions contained in a Quote or Order. The terms in this Agreement apply and are incorporated into each and every Quote and Order.
- (b) Where more than one (1) Customer has accepted a Quote, placed and Order or otherwise entered into this Agreement, the parties that make up the Customer will be jointly and severally liable for all payments and debts under this Agreement.
- (c) The date of this Agreement is the date the Supplier accepts an Order from the Customer.

1.4 Precedence

- (a) The terms of the Agreement apply to a Quote and Accepted Order to the exclusion of any other terms and conditions contained in any other document of the Supplier, unless otherwise agreed in writing and signed by the parties.
- (b) Any terms and conditions contained in any order, offer, acceptance or other document of the Customer and all representations, statements, terms and conditions and warranties (whether implied by statute or otherwise) not

contained in this Agreement are expressly excluded to the fullest extent permitted by law.

2. QUOTES

- 2.1 The Customer has requested and the Supplier has agreed to provide a Quote for the Products. The Supplier will deliver the Quote to the Customer by email only.
- 2.2 The Quote is only capable of acceptance in writing for 14 days from the date it is emailed from the Supplier to the Customer. The Supplier will only consider a Quote as accepted by the Customer if it is signed by the Customer or by an authorized person on behalf of the Customer, is dated and is delivered to the Supplier within 14 days of the Quote being emailed by the Supplier to the Customer. Acceptance must be unconditional. Any modification or change in any way to the Quote or Other Instructions by the Customer will be deemed a rejection of the Quote and does not constitute acceptance of the Quote by the Customer (**First Quote**). The Supplier may issue a further Quote based on the variations to the First Quote by the Customer in which case, the process and dates for acceptance of that further Quote under this clause will apply.
- 2.3 If the Supplier accepts the signed and dated Quote from the Customer, the Customer is deemed to have accepted the Quote at that time). On and from an Order Acceptance, the Supplier agrees to sell and the Customer agrees to buy the Products for the Purchase Price subject to the terms of this Agreement.
- 2.4 If the Customer does not accept the Quote or the acceptance date for the Quote has lapsed, the Quote will be deemed expired and not capable of acceptance by the Customer (**Expired Quote**). If the Customer subsequently wishes to accept an Expired Quote, the Supplier may elect, in its unfettered discretion to:
- (a) accept an Expired Quote; or
 - (b) vary an Expired Quote (in any way the Supplier requires) for acceptance by the Customer; or
 - (c) issue a new Quote (in which case the Expired Quote is not capable of acceptance).
- 2.5 The Quote is subject to change, alteration and variation (including the Purchase Price) and withdrawal at any time on written notice to the Customer up to the Supplier confirming receipt of the Accepted Quote from the Customer.

3. PURCHASE PRICE AND PAYMENT TERMS

- 3.1 The Customer must pay the Purchase Price in accordance with the Payment Terms and in the event the Payment Terms have not been specified in part or full by the Supplier, then on demand by the Supplier. This is an essential term.
- 3.2 All payments made by the Customer are made without set-off or counterclaim and free and clear of and without deduction for any other charges of any kind and the Customer must not set-off any amount owing by the Customer to the Supplier. No payment shall be construed as received until the Supplier has received cleared funds.
- 3.3 The Purchase Price is exclusive of GST, any other taxes, duties and charges. GST and any other applicable taxes, duties, charges and costs will be payable by the Customer in addition to the Purchase Price.
- 3.4 The Supplier is not liable for any costs or charges incurred by the Customer in complying with the Payment Terms, such as third party bank charges.
- 3.5 The Delivery Cost (if any) will be advised by the Supplier to the Customer either in the Quote. The Delivery Cost, if it has not been paid by the Customer to the Supplier, must be paid by the Customer to the Supplier and until the Delivery Cost has been paid, the Supplier is under no obligation to Deliver the Products to the Customer.
- 3.6 The Customer's liability to pay the Purchase Price, the Delivery Cost and any other cost or expense under this Agreement will not be offset, reduced or affected in any way as a result of any returns of, or credits or rebates due or owing to the Customer unless otherwise agreed to in writing by the Supplier.
- 3.7 If the Customer fails to make a payment under this Agreement when it is due, the Supplier shall, in addition to all other rights and remedies available under this Agreement at law or in equity, be entitled to charge default interest at the rate of 10% per annum plus the interest rate set by the Reserve Bank of Australia calculated daily on all amounts outstanding from the due date until payment is made.
- 3.8 Default Interest pursuant to clause 3.7 shall be:

- (a) payable on demand; and
- (b) calculated daily from the date the payment was due to the actual date that the payment is made in full.

- 3.9 Any payment the Customer makes to the Supplier shall first be credited against any default interest accrued pursuant to this clause 3 to the actual date of payment.
- 3.10 The Supplier reserves the right to pass any debts incurred under this Agreement to a collection agency. Debt collection fees may be added to the amount outstanding to the Supplier. In addition to any outstanding amounts, the Customer agrees to indemnify the Supplier for all legal costs (on a solicitor and client or full indemnity basis, whichever is greater) and other expenses incurred by the Supplier in connection with a demand, action, or other proceeding (including mediation, out of court settlement or any action taken for recovery of the debts from the Customer) arising out of a breach of the terms of this Agreement, including the failure by the Customer to pay an amount due to the Supplier by the due date for that amount.
- 3.11 The Customer hereby gives the Supplier the authority to make inquiries from credit reporting agencies as to the credit and financial responsibility of the Customer and or its partners or directors as required by the Supplier from time to time.
- 3.12 All directors of the Customer (where the Customer is a company) shall be personally liable for the performance of the Customer's obligations under these terms and conditions including the payment of all amounts outstanding to the Supplier. The Supplier reserves the right to require the Customer to obtain a guarantee and indemnity from the directors of the Customer at any time prior to all amounts owing by the Customer to the Supplier being paid in full.
- 3.13 A statement in writing signed by an authorised officer of the Supplier setting out the moneys due and owing to the Supplier at the date of the statement shall be sufficient evidence of the amount so due and owing until the contrary is proven.

4. DEPOSIT

- 4.1 If the Order includes provision for payment of a Deposit or if the Supplier subsequently notifies the Customer that it requires a Deposit, then:
- (a) the Supplier is not required to Deliver the Products until the Deposit has been paid in full; and
 - (b) the Deposit is immediately released to the Supplier and the Customer is not entitled to refund of the Deposit unless the Customer makes a valid claim for its return under the Warranty or claim under the Consumer Guarantees.
- 4.2 Where the Customer fails to pay the Deposit when required by this Agreement, the Supplier may:
- (a) suspend the order and/or delivery of the Products; and/or
 - (b) after seven (7) days' prior written notice to the Customer, terminate this Agreement and claim any loss or damage suffered by the Supplier as a result of the Customer's breach of this clause. Loss and damage includes the actual cost of work in progress up to termination plus the Supplier's loss of gross profit on the Products.

5. VARIATION TO PURCHASE PRICE

- 5.1 The Customer acknowledges and agrees that:
- (a) that the Supplier has provided the Customer with a Delivery Date for the Delivery of the Products;
 - (b) between an Accepted Order and the Delivery Date, the cost of raw materials, parts and accessories and other third party supplies that are required by the manufacturer of the Products may increase (for reasons outside the control of the Supplier) (**Raw Material Cost Increase**);
 - (c) between an Accepted Order and the Delivery Date, the exchange rate pairs payable by the Supplier may fluctuate at the time of payment by the Supplier for raw materials to manufacture the Products (**Currency Fluctuation**);
 - (d) that the Supplier must accept the Raw Material Cost Increase and the Currency Fluctuation, and pass the Raw Material Cost Increase and Currency Fluctuation onto the Customer by way of an increased Purchase Price at cost.
- 5.2 In the event the Supplier notifies the Customer before the Delivery Date that it has suffered a Raw Material Cost Increase and/or Currency Fluctuation, and that the Purchase Price must be varied to

accommodate the Raw Material Cost Increase and/or Currency Fluctuation (**Varied Purchase Price**), the Customer may elect to either (by notice in writing to the Supplier with 7 days of the date of the notification from the Supplier):

- (a) accept the Varied Purchase Price, in which case the Purchase Price is deemed to be varied to the amount of the Varied Purchase Price with all other terms and conditions of this Agreement to remain the same;
- (b) cancel the Order in which case all monies other than the Deposit shall be refunded by the Supplier to the Customer.

6. CANCELLATION OF ACCEPTED ORDER

- 6.1 No Accepted Order may be cancelled by the Customer other than in accordance with this clause 6 or 6.2(b).
- 6.2 Without prejudice to the Supplier's right to refuse a request by the Customer to cancel an Accepted Order in full or cancel part of an Accepted Order, as a condition of giving such consent the Supplier may require that the Customer pay any and all costs reasonably incurred by the Supplier in relation to the cancelled Order or the cancelled part of the Order (**Cancellation Costs**). The Supplier may recover the Cancellation Costs as a liquidated debt from the Customer.

7. DELIVERY

- 7.1 If requested by the Customer, the Supplier will deliver the Products to the Delivery Address and only to the Delivery Address. The Customer must make all arrangements necessary to take Delivery of the Products when the Supplier notifies the Customer that the Products is being tendered for Delivery on the Delivery Date. The Customer or the Customer's representative must be present on Delivery to inspect the Products and sign for acceptance of the Products on Delivery.
- 7.2 The Supplier uses third party delivery services and whilst the Supplier shall use commercially reasonable efforts to Deliver the Products by the Delivery Date provided, however, that under no circumstances shall the Supplier be responsible for any damages or losses sustained by Customer or any third party as a result of delays in the Delivery of the Products to the Customer for whatever cause.
- 7.3 The Supplier's sole obligation with respect to Delivery, is to Deliver the Products to the Delivery Address on or about the Delivery Date. The Supplier is not liable to the Customer in anyway, and is not responsible for, any loss or damage suffered by the Customer as a result of the Customer failing to take Delivery at the Delivery Address. The Supplier is only obligated to Deliver the Products to the Delivery Address. The Customer may change the Delivery Address by notice in writing to the Supplier (**New Delivery Address**) and until the Supplier confirm acceptance of the New Delivery Address, the Supplier will only Deliver to the Delivery Address in the Quote. Consent to the New Delivery Address may be on terms and conditions specified by the Supplier and may include a revised Delivery Cost wherein Delivery will only occur after the revised Delivery Cost is paid in full.
- 7.4 If for any reason beyond the control of the Supplier, including without limitation, strike, trade dispute, fire, flood, accident, tempest, earthquake, war declared or undeclared, blockade, governmental or quasi-governmental restraint, unavailability of goods used in the manufacture of the Products, loss or destruction of the Products, delays in transport or an act of God, an Order cannot be fulfilled by the Delivery Date or at the time required by the Customer or at all, the Supplier is not required to supply the Products to the extent and for the period that it is so unable to supply the Products and the Supplier is not liable to the Customer in respect of any inability on its part to perform its obligations during this time including Delivering the Products on or about the Delivery Date.

8. INSURANCE, TITLE AND RISK

- 8.1 From the date the Products are dispatched for Delivery up to the date the Customer takes Delivery of the Products, the Customer must insure the Products against all loss and damage and the Supplier's interest must be noted on such insurance policy. The Supplier is not liable to the Customer or responsible for any damage to, or loss of, the Products during Delivery.
- 8.2 Risk in the Products passes to the Customer upon the Products being dispatched for Delivery. The Customer accepts all risk involved in the use and possession of the Products after Delivery.
- 8.3 Title to the Products transfers from the Supplier to the Customer upon full payment of the Purchase Price for the Products and any other monies outstanding to the Supplier from the Customer under this Agreement. This reservation of title and ownership is effective whether or not the Products have been altered from their supplied form, or

commingled with other goods.

9. WARRANTIES AND DEFECTS

- 9.1 In addition to any other warranties implied by law, the Products will be of merchantable quality at the time it is Delivered, and be constructed in accordance with the applicable standards and laws of Australia.
- 9.2 Spare Parts Warranty: All spare parts come with a 90-day warranty from the date of sale. This warranty applies to defects in materials and workmanship under normal use and conditions.
- 9.3 Service Warranty: For service-related tasks, a 30-day warranty is provided from the date the service is completed, unless a longer warranty period is specified in writing. This warranty covers defects in workmanship directly related to the service performed. Upon Delivery of the Products:
 - (a) the Customer must immediately visually inspect the Products;
 - (b) within 5 days of Delivery, give the Supplier Notice of any Defects. This is an essential term;
 - (c) if no Notice is given in that time, the Products will be deemed to be free of Defects.
- 9.4 Upon receipt of Notice under clause ~~9.39.39.2~~(b), the Supplier will, within 14 days, advise the Customer of whether:
 - (a) the Defect is covered by the Warranty; or
 - (b) the Defect is covered by the Consumer Guarantees; or
 - (c) the Defect is not covered by the Warranty or Consumer Guarantees; or
 - (d) the Supplier does not consider the Defect to be a Defect for the purposes of this Agreement.
- 9.5 If the Supplier notifies the Customer that the Defect is covered by the Warranty or the Consumer Guarantees the Customer must return the Products to the Supplier.
- 9.6 Costs relating to the return of the Products under this clause 8 are payable:
 - (a) if the Defect was caused by the Supplier, by the Supplier and to be transported by the Supplier's nominated carrier;
 - (b) otherwise, by the Customer.
- 9.7 The Customer must not withhold the payment of the Purchase Price or any part of the Purchase Price pending the resolution of a claim for a Defect.
- 9.8 The Supplier is not required to provide a refund or replacement if the Products does not have any Defects.
- 9.9 The Supplier will not be liable to the Customer for any Defects or damage to, or destruction of, the Products caused by:
 - (a) any failure by the Customer to properly and safely store the Products;
 - (b) any failure by the Customer to use the Products for its intended purpose;
 - (c) any use by the Customer or any other person of the Products contrary to the instructions for the use of the Products;
 - (d) any act or omission by the Customer or any other person after Delivery;
 - (e) any failure to properly maintain the Products.
- 10. **POSSESSION OR CONTROL BEFORE PAYMENT OF PURCHASE PRICE AND REPOSSESSION**
- 10.1 If the Customer has taken possession or control of the Products prior to the Purchase Price and any other monies owing to the Supplier being paid in full, until the Purchase Price and any other monies are paid in full, the Customer must:
 - (a) keep the Products safe and free from deterioration, destruction, loss or harm, clearly designate the Products is the property of the Supplier;
 - (b) store the Products in such a way that it is clearly identified as the property of the Supplier; and
 - (c) keep full and complete records of the physical location of the Products and the ownership of the Products by the Supplier.

10.2 Should the Customer default in payment of all or part of the Purchase Price after taking possession or control of the Products, the Supplier may enter the Customer's premises and retake possession of and permanently retain the Products, terminate this Agreement and exercise those rights under clause 21.4 of this Agreement.

10.3 Without in any way being liable to the Customer or any person claiming through the Customer, the Supplier shall have the right to sell or dispose of the Products removed under clause 10.2 or otherwise in its sole discretion and shall not be responsible for any loss suffered by the Customer for doing so.

11. CUSTOMER'S REPRESENTATIONS

11.1 The Customer represents, acknowledges and agrees that:

- (a) it has undertaken its own due diligence as to the suitability of the Products for the Customer's needs and requirements and that it has not relied on any representation made by the Supplier, its directors or employees;
- (b) the Customer is responsible for the accuracy of all details and information it provides the Supplier and the Supplier is not responsible to check the accuracy of such information;
- (c) the Customer shall comply with the Payment Terms.

11.2 Clause 11.1 is an essential term.

12. INTELLECUTAL PROPERTY

12.1 The Customer will not intentionally deface, obscure or remove from any of the Supplier or manufacturer Intellectual Property from the Products.

12.2 The Customer must notify the Supplier immediately if the Customer's use of the Products results in an actual or alleged infringement of a third party's intellectual property rights.

13. CONFIDENTIALITY

13.1 A party shall not, without the prior written approval of the other party, disclose the other party's Confidential Information to any third party (except to personnel with a need to know and only to the extent they need to know).

13.2 A party shall not be in breach of clause 13.1 in circumstances where it is legally compelled or required by a government body or Customer to disclose the other party's Confidential Information so long as such party provides the other party with timely prior written notice of such disclosure.

13.3 Each party will take all reasonable steps to ensure that its personnel do not make public or disclose the other party's Confidential Information.

13.4 the Supplier may at any time require the Customer to arrange for its personnel engaged in the performance of this Agreement to execute a suitable confidentiality deed. The Customer shall arrange for all such deeds to be executed within the time frame reasonably proposed by the Supplier.

13.5 The Customer will on demand return to the Supplier any documents or things containing Confidential Information, which has been supplied by the Supplier to the Customer in connection with this Agreement.

13.6 Notwithstanding any other provisions, either party may disclose the terms of this Agreement to its related companies, solicitors, auditors, insurers and accountants and shall ensure that every person to whom that disclosure is made uses that information solely for the purposes of advising or reporting to that party.

14. CONFIDENTIAL INFORMATION IN THE PUBLIC DOMAIN

14.1 The undertakings in clause 13 do not extend to any Confidential Information which the Customer proves:

- (a) was in the Customer's possession before the disclosure to it by the Customer and was not acquired directly or indirectly from the Customer or from any person who owed an obligation of confidence to the Customer;
- (b) is, or has become, part of the public domain, except as a result of a breach by the Customer of its obligations under clause 13;
- (c) has been received in good faith by the Customer from a third party not in breach of any obligation of confidence owing by the third party to the Customer; or
- (d) the Customer is required by law or by the listing rules of a publicly listed stock exchange or, if any other securities exchange body which imposes similar obligations, if

applicable, to disclose.

15. PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)

15.1 The Customer acknowledge that these terms constitute a **Security Agreement** which creates (or may create) a **Security Interest** in favour of the Supplier and in all Personal Property previously supplied by the Supplier to the Customer and all after acquired Personal Property supplied to the Customer by the Supplier (or for the Customer's account) to secure the payment from time to time and at a time of any money outstanding. The Customer agrees to grant to the Supplier a **Purchase Money Security Interest**.

15.2 The Customer accepts, acknowledges and agrees that:

- (a) pursuant to the retention of title clause in clause 8.3 the Supplier obtains a Security Interest in the Products supplied by the Supplier to the Customer on credit, including any commingled goods; and
- (b) the Supplier can, without notice to the Customer, seek **Registration** of its Security Interest on the PPSR.

15.3 Pursuant to section 275(6) of the PPSA, the Customer agrees the Supplier is not required to disclose to an interested person information pertaining to the Supplier's Security Interest unless required to do so pursuant to the PPSA or at law generally.

15.4 The Customer will:

- (a) sign any further documents and/or provide any further information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to enable perfection of its Security Interest or registration of a **Financing Statement** or **Financing Change Statement** on the PPSR;
- (b) not register a Financing Change Statement or make a demand to alter the Financing Statement pursuant to section 178 of the PPSA in respect of the Products, without the prior written consent of the Supplier;
- (c) give the Supplier not less than 14 days written notice of any proposed change in their name and/or any other changes in their details (including but not limited to, changes in their address, facsimile number, email address, trading name or business practice); indemnify the Supplier against any costs the Supplier incurs in perfecting and maintaining its perfected Security Interest in the Products or such other Personal Property under the PPSA and any costs the Supplier may incur in the course of enforcing any of its rights under this Agreement, the PPSA or at law generally; procure from any persons considered by the Supplier to be relevant to its security position, such agreement and waivers as the Supplier may at any time reasonably require.

15.5 To the extent permitted by the PPSA the Customer waives its rights to:

- (a) receive a notice under any of subsections 95(1), 121(4), 129(2) and 130(1) and sections 135 and 157 of the PPSA;
- (b) receive a statement that includes the information referred to in paragraph 132 (3)(d) of the PPSA ;
- (c) receive a statement under subsection 132(4) of the PPSA; redeem Collateral after default under section 142 of the PPSA unless the lessor agrees in writing to such redemption;
- (d) reinstate the Security Agreement under section 143 of the PPSA ; and
- (e) give a Notice of Objection under section 137 of the PPSA.

15.6 Capitalised terms in this clause 15 are given their meaning from the PPSA.

16. WARRANTIES BY CUSTOMER

16.1 The Customer represent and warrants to the Supplier that (as at the date of the Accepted Order and at the Delivery Date):

- (a) the Customer has all and full authority to accept the Quote, enter into this Agreement and be bound by all terms of this Agreement;
- (b) all information provided by the Customer to the Supplier is accurate, complete and current;
- (c) the Customer is solvent as at the date of this Agreement and at all times up to and including Delivery.

- 16.2 Clause 17.1 is an essential term.
- 16.3 The Customer will be liable for all costs, fees, charges and other amounts that may become payable to the Supplier or any other person as a result of any breach of the warranties given by the Customer to the Supplier under this clause 16.
- 17. GENERAL INDEMNITY**
- 17.1 The Customer shall indemnify the Supplier against all loss and damage including but not limited to loss for claims of death, personal injury and damage to property which made be made against the Supplier as a result of or in connection with the Customer's or any other person's use of the Products after Delivery.
- 17.2 Subject to this Agreement, the Customer releases and holds harmless the Supplier from all loss that the Customer may or has incurred as a result of or in connection with the Customer's use or any other person's use of the Products after Delivery.
- 17.3 A reference to the Supplier in this clause 17 is a reference to the Supplier's directors, agents, contractors and employees.
- 18. LIMITATION OF LIABILITY**
- 18.1 Subject to the express terms of this Agreement and to any statute or regulations (State or Federal) which cannot be excluded contractually, the parties expressly agree that:
- the Supplier does not accept any liability whatsoever in respect of any loss or damage (including injury, death, loss of profits or repudiation, economic loss and consequential loss or other damage) however caused (including the Supplier's negligence) which may be suffered or incurred or which may arise either directly or indirectly in respect of any use of the Products;
 - all warranties implied by any statute that can be excluded are hereby expressly excluded.
- 18.2 Where any person suffers loss, damage or injury (including personal injury) as a direct or indirect result of any failure referred to in clause 18.1 or as a direct or indirect result of any misuse of the Products then the Customer hereby indemnifies the Supplier against any liability (including costs) of the Supplier to that person.
- 18.3 Any descriptive information or other advice, recommendation, information, assistance or service provided by the Supplier is intended as a general guide only and should not be relied upon and is provided without liability or responsibility (including for negligence) on the part of the Supplier.
- 18.4 Except as provided by these terms, the Supplier shall not be under any liability, whether in contract, tort or otherwise in respect of defects in the Products or for any injury, damage or loss resulting from such a defect or from any work done in connection there with except to the extent that any statute applicable to these conditions prevents the exclusion, restriction or modification of such condition or warranties.
- 18.5 Notwithstanding any other provisions of this Agreement the Supplier shall not be liable to the Customer for any consequential loss, loss of profit or of contract howsoever arising nor shall the Supplier be under any liability whether in contract or otherwise nor for any injury, damage or loss whether consequential or otherwise save as is expressly provided in this Agreement.
- 18.6 The Supplier's aggregate liability to the Customer is capped to the amount of all monies the Supplier has received from the Customer pursuant to the terms of this Agreement.
- 18.7 A reference to the Supplier in this clause 18 is a reference to the Supplier's directors, agents, contractors and employees.
- 19. EXCLUSIONS AND LIMITATION OF LIABILITY UNDER ACL**
- 19.1 The exclusions and limitations in this clause 19 are subject to clause 19.2.
- 19.2 All express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise), relating to this Agreement, that are not contained in it, are excluded to the fullest extent permitted by law.
- 19.3 Any liability arising in relation to Products arising and whether for consequential loss or otherwise, including any liability arising by virtue of any representation or warranty, whether express or implied by law, is hereby excluded to the fullest extent permitted by law. the Supplier will not be liable for any special, indirect, consequential or economic loss or damage or loss of profits (in contract or tort or arising from any other cause of action) suffered by the Customer or any other person

resulting from any act or omission by the Supplier (including breach, termination or non-observance of the terms of this Agreement).

- 19.4 To the extent that goods supplied by the Supplier are not goods of a kind ordinarily acquired for personal, domestic or household use and the Customer is deemed to be a consumer for the purposes of section 64A of the Australian Consumer Law, the Customer agrees that the Supplier's liability for a failure to comply with a Consumer Guarantee that the Customer may have a benefit under the Australian Consumer Law (other than a guarantee under s 51 (title), 52 (undisturbed possession) and 53 (undisclosed securities), is limited to, at the option of the Supplier, one or more of the following:
- replacement of the Products or the supply of equivalent Products;
 - the repair of the Products;
 - the payment of the cost of replacing the Products or of acquiring an equivalent Products; or
 - the payment of the cost of having the Products repaired.
- 20. UNPAID RIGHTS**
- 20.1 Where the Customer has left the Products with the Supplier for repair, modification, exchange or for the Supplier to perform any other service in relation to the Products and the Supplier has not received any monies outstanding in relation to the Products, or the payment has been dishonoured, the Supplier shall have:
- a lien on the Products;
 - the right to retain the item for the price while the Supplier is in possession of the Products;
 - a right to sell the Products.
- 20.2 The lien of the Supplier shall continue despite the commencement of proceedings, or judgment for the price having been obtained.
- 21. TERMINATION**
- 21.1 the Supplier is entitled to terminate this Agreement and cancel an Order before Delivery occurs by giving Notice to that effect to the Customer if any of the following events occur:
- on seven (7) days' prior written notice, the Customer fails to pay any amount owing to the Supplier on or before the date it is due to be paid including the payment of the Deposit;
 - the Supplier reasonably forms the opinion that the Customer is insolvent or at material risk of insolvency;
 - the Customer commits any breach of this Agreement and fails to remedy that breach within a reasonable time of the date of a Notice from the Supplier to do so;
 - the Customer ceases, or threatens to cease, to carry on business (if it is carrying on business as at the date of the Accepted Quote);
 - the Customer fails to follow any reasonable and lawful direction given by the Supplier to the Customer for the purposes of safe guarding the Supplier's Intellectual Property or Confidential Information;
 - the Customer breaches any term of this Agreement that is expressed to be an essential term or breaches any other term and fails to remedy that breach within a reasonable time after receiving notice from the Supplier about the breach;
 - the Supplier reasonably forms the opinion that supplying the Products to the Customer may have a negative impact upon the Supplier's business or commercial reputation or image.
- 21.2 If the Supplier cancels an Order and/or terminates this Agreement under clause ~~21.121.121.4~~ (other than clause 21.1(g), then in addition to all other rights and remedies the Supplier might have:
- the Deposit and any other monies paid by the Customer to the Supplier on or before the effective date of termination of this Agreement shall be retained in full by the Supplier and dealt with by the Supplier in any manner it deems fit; and
 - if the Products has been partially completed or Completed, sell the Products and where the Products is partially completed, complete the Products and then sell the Products to another party and recover the difference between the Purchase Price and the price the Supplier receives for selling the Products under this clause 21.2 and all costs and expenses associated with the sale of the Products.

21.3 In the event the Supplier terminates this Agreement under clause 21.1(g), then the Supplier shall refund all monies paid by the Customer to the Supplier for the Products up to and including the date of termination and neither Party shall have a claim against the other Party arising out of the Supplier's exercise of its right to terminate the Agreement and sale of the Products under clause 21.1(g) other than the Customers right to a refund in this clause.

21.4 Notwithstanding termination of this Agreement, the obligations of this Agreement will continue to be binding on the Parties and fully enforceable in respect to the rights and obligations of each Party relating to:

- (a) the payment of any money outstanding from the Customer to the Supplier;
- (b) the Warranty;
- (c) Confidential Information;
- (d) ownership of Intellectual Property; and
- (e) obligations in this clause and otherwise in the Agreement that are expressly intended to apply after termination.

22. RELATIONSHIP

22.1 The Parties acknowledge that they are not in partnership, there is no joint venture between them or franchise arrangement, and that the only relationship between them is that of supplier of the Products (in the case of the Supplier) and as customer (in the case of the Customer) in respect of the Products on the terms in this Agreement. Neither Party may claim or hold itself out as having any other relationship, authority, right or entitlement to represent or act as agent of the other or to have any interest or shareholding in the other.

22.2 It is expressly agreed that nothing in this Agreement will give rise to any fiduciary relationship between the Supplier and the Customer and neither Party owes any fiduciary duty to the other in respect of its conduct.

23. DISPUTE RESOLUTION

- (a) A Party must not start court proceedings in respect of a Dispute unless it has complied with this clause 23.
- (b) A Party claiming that a Dispute has arisen must notify each other party to the Dispute giving details of the Dispute.
- (c) During the Initial Period after a notice is given under clause 23(c) each Disputant must authorise a representative to use their best efforts to resolve the Dispute.
- (d) If, in relation to a Dispute, a Disputant breaches any provision of clauses 23(a) to 23(c), each other Disputant need not comply with clauses 23(a) to 23(c) in relation to that Dispute.

24. GENERAL

24.1 Sub-contract

the Supplier may subcontract all or any part of its rights and obligations under this Agreement without the Customer's consent.

24.2 Variations

- (a) This Agreement may only be varied in writing signed by both the Parties.
- (b) If no agreement is reached as to a sought variation, then the Products will be manufactured and supplied in accordance with the terms of the Order and the Customer will accept the Products as so manufactured and supplied.

24.3 Waiver

- (a) The waiver by any Party of any right or entitlement or to claim in respect of any breach of this Agreement must be in writing signed by the Party so waiving. No purported waiver that is not in writing and signed by the waiving Party will have any effect whatsoever.
- (b) A waiver will not preclude that waiving Party from relying upon any such right or entitlement arising in the future or to claim in respect of any subsequent breach of this Agreement even if that future right, entitlement or subsequent is the same as that previously waived.

24.4 Notices

- (a) All Notices or requests given by either Party to the other are deemed to have been properly given if posted by mail or emailed to the email addresses set out in the Order.

- (b) Any Notice or request sent by email will be deemed served on the day after being emailed. An email record will be conclusive evidence of the date of emailing. Any Notice or request sent by mail will be deemed served 3 business days after the date of posting, not including the date of posting.
- (c) Any Notice or request sent by a Party to the other must be signed by a director or officer of the sending Party or appear on its face (where an email) to be so signed.
- (d) All Notices must be given in English.
- (e) Either Party may change its details for service of a Notice by serving a Notice on the other party setting out its new address for service or other contact address.

24.5 Force Majeure

Except for obligations to make payment, delay or non-performance by any Party will be excused if such delay or non-performance is due to an event or events outside the Party's reasonable control, including but not limited to:

- (a) acts of god;
- (b) natural disasters (including flood or fire);
- (c) sabotage;
- (d) accident;
- (e) riot;
- (f) shortage of supplies, equipment, and materials;
- (g) pandemic or epidemic;
- (h) strikes and lockouts;
- (i) civil unrest; or
- (j) malicious damage.
- (k) bankruptcy, insolvency, or cessation of operations by suppliers critical to the performance of the obligations, which is outside the reasonable control of the supplying party, in accordance with the applicable provisions of applicable law
- (l)

24.6 Assignment

- (a) the Supplier may assign this Agreement at any time subject to the assignee agreeing to be bound by the terms of this Agreement as if it was the original party to it.
- (b) The Customer must not deal with or assign or attempt to assign this Agreement without the prior written consent of the Supplier.

24.7 Confidentiality of Agreement

All terms of this Agreement shall be kept strictly confidential as between the Parties. None of the Parties to this Agreement shall disclose any terms or information relating to, received, or developed in the course of this Agreement relating to the Agreement or the business of either Party without prior written consent of the other Party.

24.8 Severability

If any clause of this Agreement is invalid under any applicable such Law, the clause will be limited, narrowed, construed or altered as necessary to render it valid, but only to the extent necessary to achieve such validity. If necessary the invalid clause will be deleted from the Agreement and the remaining clauses will remain in full force and effect.

24.9 Counterparts

This Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which together will constitute one instrument and Agreement. The Parties agree and consent to the giving of Notices electronically.

24.10 Entire Agreement

- (a) This Agreement represents the entire agreement between the Parties relating to the subject matter of the Agreement and supersedes all prior agreements, understandings, representations and warranties relating to the subject matter of this Agreement.

- (b) Neither Party has relied on or been induced by any representations or promises made to it prior to entering into this Agreement in reaching its decision to enter into this Agreement on these terms.

24.11 **Governing Law and Jurisdiction**

It is agreed by the Parties that this Agreement is to be construed in accordance with the laws of Victoria and each Party covenants that it submits to the jurisdiction of the Courts of Victoria for the resolution of any dispute under this Agreement.