

# General Terms and Conditions of Sale

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## 1. Definitions

Except where expressly indicated otherwise, the terms below have the following meaning in the context of this document:

<b>Additional Warranties</b>	are applicable only if the Seller is identified in the Quotation and/or Purchase Order as HS Company Pty Ltd (ABN 52 099 707 856) and can be accessed on the following link <a href="http://www.hardyspicer.com.au/PDF_Files/Additional_Warranties_to_TCs_2012.pdf">http://www.hardyspicer.com.au/PDF_Files/Additional_Warranties_to_TCs_2012.pdf</a>	<b>Loss</b>	all actions, claims, costs (including legal costs on an indemnity basis), damages, expenses, interest, liabilities and losses (excluding any special, indirect, incidental, exemplary or consequential damages or losses of any kind such as, but not limited to, loss of profit, loss of goodwill, loss of savings, loss of inventory, cost of capital, loss of production, loss of revenue or loss of business opportunity).
<b>Agreement</b>	the agreement for the provision of Goods and/or Services by the Seller to the Buyer comprising of each Quotation, these General Terms and Conditions Sale and the relevant Purchase Order accepted by the Seller.	<b>Party or Parties</b>	means either the Seller or the Buyer, or both Seller and Buyer.
<b>Buyer</b>	the person or entity who buys Goods and/or Services from the Seller as identified in the Quotation and/or Purchase Order.	<b>Personnel</b>	any subcontractor, employee and agent involved or engaged in the performance of a Party's obligations under this Agreement.
<b>Buyer Materials</b>	any documents or materials, including Specifications, which are provided by the Buyer to the Seller.	<b>Price</b>	any and all fees, rates and prices, including packing and delivery costs, set out in the Quotation as applicable to the Goods and/or Services requested in a Purchase Order.
<b>Confidential Information</b>	any information provided by a Party to the other which is, or can be inferred to be, provided in commercial confidence or of a confidential nature, whether or not expressly marked "Confidential", including any information relating to the commercial activities, technologies, business processes, client relationships, strategic information, know-how and any other information regarding the business of that Party which is not already in the public domain.	<b>Purchase Order</b>	any document, including purchase orders, whereby the Buyer accepts to purchase Goods and/or Services from the Seller on the terms of this Agreement.
<b>Delivery</b>	the time when delivery of the Goods to the Buyer is to occur pursuant to clause 8.4 ( <i>Delivery</i> ).	<b>Seller</b>	Inenco Group Pty Ltd (ABN 77 007 595 977) or any of its related bodies corporate as defined by the <i>Corporations Act 2001</i> (Cth) and is identified in the Quotation and/or Purchase Order.
<b>Delivery Place</b>	the place where the Goods will be delivered to as described in the Purchase Order.	<b>Seller Materials</b>	any presentations, designs, drawings, which are created or developed by the Seller in relation to the Goods and/or Services under this Agreement, whether or not as part of the Services and jointly with the Buyer, and includes the Goods, but excludes any Buyer Materials.
<b>Dispute</b>	any dispute arising under or in connection with this Agreement.	<b>Services</b>	the services to be provided to the Buyer by the Seller as described in the Quotation and requested in the Purchase Order.
<b>Dispute Notice</b>	a notice of Dispute given by a Party to the other pursuant to clause 22 ( <i>Dispute</i> ).	<b>Specifications</b>	any detailed description of the measurable characteristics desired by the Buyer in a Good, such as quality, size, weight, performance parameters, safety requirements or any design, manufacture methodology, materials, etc.
<b>Force Majeure Event</b>	any of the events referred to in clause 19.1 ( <i>Force Majeure</i> ).	<b>Quotation</b>	the document issued by the Seller setting out the Services and applicable Price offered to the Buyer.
<b>Goods</b>	the Goods in the applicable quantity to be provided to the Buyer by the Seller as described in the Quotation and requested in the Purchase Order.	<b>2. Applicability of Agreement</b>	
<b>Intellectual Property Rights</b>	any intellectual and industrial property rights or entitlements throughout the world including those in connection with any confidential information, copyright (including rights analogous to copyright), moral rights, inventions (including patents), trade marks and designs, whether now existing, future, registered or registrable, as well as any right to apply for the registration, renewal and extension of those rights, and any other Intellectual Property Rights as defined in Article 2 of the World Intellectual Property Organisation Convention of 1967.	2.1	This Agreement applies to all Goods and/or Services supplied or to be supplied by the Seller to the Buyer.
		2.2	The Buyer is deemed to have accepted and becomes bound by this Agreement by placing a Purchase Order or otherwise instructing the Seller to provide Goods and/or Services.
		2.3	Unless expressly agreed otherwise by the Seller 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 Purchase Order.
		2.4	The Buyer warrants that any Purchase Order or application (submitted either online or otherwise) is done by an authorised representative of the Buyer.
		<b>3. Ecommerce</b>	
		3.1	Whilst the Seller tries and ensures that all details, descriptions and prices which appear on the Seller's website are accurate,

- errors may occur. The Seller may choose to not fill any orders (or part of an order) that the Buyer has placed where the website contains errors or inaccuracies, including, without limitation, errors, inaccuracies or out-of-date information regarding pricing, shipping, payment terms, or return policies.
- 3.2 The Seller is not liable to the Buyer or any third parties for any Loss in connection with use of or inability to use or access the website or a linked website.
- 3.3 The *Competition and Consumer Act 2010* (Cth) and similar State and Territory legislation in Australia may confer rights, guarantees and remedies on the Buyer in relation to the provision by the Seller of Goods and/or Services on the website, which cannot be excluded, restricted or modified. The Seller does not exclude these rights but does exclude all other conditions and warranties implied by custom, law or statute.
- 4. Quotation and Purchase Orders**
- 4.1 A Quotation is an offer valid for 30 days, or such other period as stated in the Quotation.
- 4.2 Where the Buyer has a credit account with the Seller, Purchase Orders are subject to approval of the Seller's credit department. The Seller may at any time alter or suspend credit, refuse shipment or cancel unfilled Purchase Orders, when in the Seller's opinion, the Buyer is not creditworthy. In all other cases, Purchase Orders will be effective subject to the approval of an authorised representative of the Seller.
- 4.3 Changes to or cancellations of Purchase Orders will not be effective unless accepted in writing by the Seller. The Buyer is liable for any Loss incurred by the Seller in connection with any change to or cancellation of a Purchase Order by the Buyer.
- 5. Agreement**
- 5.1 Notwithstanding the applicability of this Agreement to the Buyer pursuant to clause 2.2 (*Applicability of Agreement*) above, no agreement arises from, and the Seller has no obligation to provide Goods and/or Services to the Buyer under, a Quotation or Purchase Order unless and until the Seller expressly approves the Purchase Order pursuant to clause 4.2 (*Quotation and Purchase Orders*).
- 6. Performance of Services**
- 6.1 The Seller will provide the Services to the Buyer in accordance with this Agreement and with due care and skill.
- 6.2 The Buyer will provide such assistance and information to the Seller as reasonably required by the Seller from time to time to assist in the provision of the Goods and/or Services.
- 6.3 If the Seller fails to provide any Services, such as installation or training, on any estimated date, the Seller will provide the Services within a reasonable time.
- 6.4 Where the Seller is to provide Services or any part of it at Buyer's premises, the Buyer must:
- provide proper and safe access to and at the place where the Services are to be provided;
  - ensure the premises are clean, safe and properly prepared for the provision of Services; and
  - comply with any occupational, health and safety laws.
- 6.5 The Seller may decide not to provide or suspend the Services at any time if the conditions are, in the Seller's opinion, not work safe.
- 6.6 While on the other Party's premises, a Party must comply, and require its Personnel to comply, with the other Party's policies, procedures and other site instructions.
- 6.7 The Buyer indemnifies the Seller against any Loss caused to the Seller and its Personnel, or their equipment, within the Buyer's premises, except to the extent where the Loss was caused or contributed to by a negligent or wilful act or omission of the Seller or its Personnel.

- 7. Goods and Specifications**
- 7.1 It is the responsibility of the Buyer to determine whether the Goods are consistent with and suitable for their intended purpose and use, in accordance with clause 7.
- 7.2 Without limiting the generality of clause 7.1, the Goods must not be used in any application relating to an aircraft or any apparatus connected to an aircraft.
- 7.3 Although the Seller takes all reasonable steps to ensure that descriptions, specifications, drawings and other information regarding the Goods in catalogues and other promotional materials are correct and accurate, that information does not constitute representations or warranties by the Seller in respect of the Goods, and the Seller is not liable for any error therein.
- 7.4 Where the Seller manufactures or orders the manufacture of any Goods ordered by the Buyer in accordance with any Specifications or with any Seller Materials, such Goods shall be at the Buyer's cost and the Seller will not accept responsibility or liability (including to a third party) for any performance, accuracy or reliability of the Specifications or any Goods manufactured in compliance with such Specifications or Seller Materials.
- 7.5 The Buyer shall hold the Seller harmless against any Loss resulting from infringement of any Intellectual Property Rights of a third party arising from compliance with Buyer Materials and/or Specifications.
- 8. Delivery**
- 8.1 Unless expressly stated otherwise, delivery dates set out in a Quotation or otherwise agreed in writing between the Parties are calculated from the date of the Purchase Order as an estimate only. Although the Seller will use commercially reasonable efforts to keep the delivery date stated or agreed:
- the Buyer will take delivery of the Goods whenever they are tendered for Delivery;
  - late delivery does not entitle the Buyer to cancel a Purchase Order or any part of it; and
  - the Seller will not be liable for any Loss resulting from a change of the delivery date(s) or late delivery.
- 8.2 Delivery of ex-stock is subject to confirmation by the Seller on receipt of Purchase Order.
- 8.3 The Seller determines the route and manner of delivery of the Goods.
- 8.4 Delivery of the Goods will occur at the Delivery Place, and Goods are taken to have been delivered at the time when:
- in the case of collection by the Buyer, when the Buyer or Buyer's carrier takes possession of the Goods; or
  - in the case of delivery by the Seller, when the Goods are delivered to the Delivery Place, even if the premises are unattended by the Buyer at the time of delivery.
- 8.5 The Seller may deliver the Goods in instalments. Each instalment will be invoiced upon Delivery.
- 8.6 The Seller's delivery records will be *prima facie* proof of Delivery of the Goods to the Buyer.
- 8.7 The Buyer will inspect the Goods upon Delivery and notify the Seller within 7 (seven) days of Delivery if the Buyer alleges a defect or supply error. Upon such notification and at the Seller's request, the Buyer will allow the Seller to inspect the Goods.
- 8.8 If following the Seller's inspection, the Goods are deemed non-compliant with this Agreement, the Purchase Order or any Buyer Materials/Specifications, the Buyer's sole remedy will be as per clause 17.2.
- 8.9 Goods compliant with the applicable Specifications provided by the Buyer are deemed fit for their purpose and accepted by the Buyer upon Delivery.
- 8.10 If the Buyer is unable to take Delivery for any reason, the Seller will be entitled to charge a reasonable fee for the storage, insurance and redelivery of the Goods.

- 8.11 Any Supplier approved returns must be in accordance with the Supplier's instructions.
- 9. Passing of Risk and Title**
- 9.1 Risk of damage to and loss of the Goods passes to the Buyer on Delivery. It is the responsibility of the Buyer to insure the Goods on and from Delivery.
- 9.2 Title to the Goods passes to the Buyer only if and when the Buyer has paid the Seller all amounts owing to the Seller. Where Goods are delivered by instalments, title does not pass in any Goods until payment has been made to the Seller for all the Goods delivered under the relevant Purchase Order.
- 9.3 Until title passes to the Buyer, the Buyer:
- (a) is a bailee of the Goods;
  - (b) will not remove or change the manner in which the Goods have been labelled by the Seller;
  - (c) will store the Goods in a manner which shows clearly that they are the property of the Seller;
  - (d) will not modify, change, intermix or attach the Goods to any other goods or property in any way that cannot be promptly reversed without causing damage to the Goods;
  - (e) holds the benefit of any insurance of the Goods on trust for the Seller and in the event the Goods are lost, damaged or destroyed, will pay the proceeds of such insurance to the Seller up to any outstanding amount owed by the Buyer under the Agreement;
  - (f) will not sell, dispose or otherwise part with possession of the Goods;
  - (g) irrevocably authorises the Seller to enter any premises where the Goods are kept to inspect and/or recover possession of the Goods; and
  - (h) will not encumber or grant any interest in the Goods, by means of security or otherwise, in breach of this clause 9.3 and clause 12 (*Personal Property Security*).
- 9.4 Subject to prior written consent of the Seller, the Buyer may sell the Goods before title passes to the Buyer, in which case any proceeds resulting from such sale will be held by the Buyer in a separate account on trust for the Seller until any outstanding amount owed by the Buyer under this Agreement has been fully paid to the Seller.
- 9.5 In the event of a default by the Buyer, the Seller may without limiting any other rights of the Seller, demand the immediate return of the Goods to the Seller at the Buyer's expense.
- 10. Price and Taxes**
- 10.1 In consideration for the provision of the Goods and/or Services under the Agreement, the Seller will invoice the Buyer for the Price, which the Buyer must pay.
- 10.2 At the Seller's discretion, a deposit of part or all of the Price may be required from the Buyer before provision of Goods and/or Services commences. If a deposit is requested by the Seller, the amount of the deposit will become immediately due and payable by the Buyer.
- 10.3 The Seller reserves the right to vary the Price if:
- (a) the Buyer requests, and the Parties agree to, any variation to the Goods and Services;
  - (b) the cost to the Seller is increased due to a request by the Buyer that the Goods and/or Services be provided outside normal working hours or delivered to an address other than that originally specified by the Buyer;
  - (c) in respect of imported Goods, the exchange rate used in the Quotation increases by more than 2.5% between the date of the Quotation and the date of the applicable invoice; and/or
  - (d) any additional charges, fees or taxes apply to the Goods and/or Services at Delivery.
- 10.4 Price for hire of any fitting tools and equipment is subject to change if there is any variation in quantity or type of the Goods.
- 10.5 Where special packing is required to deliver the Goods, it will be charged to the Buyer at cost price. Some packing material is charged with a deposit, which is refundable on return of this material to the applicable supplier.
- 10.6 Unless otherwise stated in the Quotation, Prices are exclusive of GST. If a supply under the Agreement is a taxable supply, the Buyer must pay the applicable amount of GST in addition to the Price. This clause is to be interpreted and applied in accordance with the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 10.7 Any other tax, fee, levy or duty imposed by any competent authority on any of the Goods or Services supplied by the Seller, including withholding tax and stamp duty, will be to the Buyer's account and calculated using the rates and methods of assessment in force at the time of Delivery.
- 10.8 If the Buyer requires the Goods to be exported from Australia, all costs relating to or arising from the export, including freight, customs, port, taxes and duties, in Australia or the country of destination, which are not included in the Quotation, are the responsibility of the Buyer.
- 11. Payment**
- 11.1 Each invoice must be paid in full within thirty (30) days of the end of the month during which the invoice was issued, unless otherwise agreed. Payment must be made on or before Delivery. Time for payment is of the essence.
- 11.2 Payment may be made:
- (a) by Electronic Fund Transfer - EFT to the account notified by the Seller for that purpose; or
  - (b) by cheque to the Seller addressed to the attention of the Finance Department at Seller's address; or
  - (c) by any other method stated in the invoice, or agreed between the Seller and the Buyer in writing.
- 11.3 Payment will be deemed made when any form of payment, other than cash, is received by the Seller in cleared funds.
- 11.4 The Buyer is not entitled to set-off against, deduct from, or withhold any amounts owed to the Seller under the Agreement.
- 11.5 If Buyer fails to pay any amounts in accordance with this clause:
- (a) The amounts owed at the end of the payment term become immediately due and payable to the Seller;
  - (b) the Seller may, in its discretion and without prejudice to any other remedy it may have, postpone or cancel the fulfilment of the relevant, or any other, Purchase Order, as well as to suspend the Buyer's credit account until payment is made;
  - (c) interest accrues daily on any outstanding amount, compounding monthly, at a rate of six percent (6%) per annum above the cash rate last published by the Reserve Bank of Australia, from the date payment becomes due and payable until the date of payment;
  - (d) any outstanding amount and interest applicable pursuant to this clause become a debt immediately owed and due; and
  - (e) the Buyer indemnifies the Seller for any Loss incurred by the Seller as a result of a failure to pay an invoice by the due date and in the recovery of the debt.
- 11.6 The Seller has the right to set-off amounts owing by the Buyer to the Seller against amounts owed by any related or associated entity of the Buyer.
- 11.7 The Seller may amend the Buyer's credit terms at any time by notice to the Buyer. If the Buyer fails to comply with the new credit terms, the Seller may refuse or cancel the provision of Goods and/or Services to the Buyer. The Seller is not liable for any Loss arising from such refusal or cancellation.

- 11.8 Nothing in this clause will prevent the Seller to take any legal action against the Buyer, at any time, for default in payment terms.
- 12. Personal Property Security**
- 12.1 This clause is to be interpreted and applied in accordance with the *Personal Property Securities Act 2000* (Cth) (**PPSA**).
- 12.2 The Buyer acknowledges and agrees that:
- (a) the Agreement constitutes a security agreement for the purposes of the PPSA, and as such, creates a security interest in the nature of a purchase money security interest to the benefit of the Seller as a secured party in all Goods provided or to be provided to the Buyer under the Agreement, to secure the payment of the Price and of any other monies which may become due and owing as a result of the supply of Goods by the Seller to the Buyer from time to time; and
  - (b) the Seller has given value for the security interest, and the Seller's security interest is effective and attaches to the Goods (including future Goods supplied by the Seller to the Buyer) immediately upon the Buyer taking Delivery of the Goods.
- 12.3 The Seller is entitled to take all steps necessary to protect and register the purchase money security interest in the Goods under the PPSA.
- 12.4 Upon request by the Seller, the Buyer will promptly sign any documents and provide any information which the Seller may request, including agreement or waivers from third parties, as necessary to register, perfect or otherwise protect and enforce the Seller's security interest in the Goods.
- 12.5 The Buyer will:
- (a) not register, or permit to be registered, any security interest in the Goods without the prior written consent of the Seller;
  - (b) at its own cost, do anything which the Buyer considers reasonably necessary to ensure that the Seller's security interest attaches to the Goods, is enforceable, perfected and otherwise effective and has the priority required by the Seller;
  - (c) perform any of its obligations under the PPSA, and enable the Seller to exercise or enforce any of its rights in relation to its security interest and/or proceeds resulting from the Goods;
  - (d) give the Seller not less than fifteen (15) days written notice of any proposed change in the Buyer's name or any other changes in the Buyer's details (including changes in the Buyer's address, facsimile number, email address, trading name or business practice);
  - (e) pay all costs incurred by the Seller in registering and maintaining the security interest properly registered under the PPSA; and
  - (f) be responsible for the full costs incurred by the Seller (including actual legal fees and disbursements on a solicitor and client basis) in obtaining an order pursuant to section 182 of the PPSA.
- 12.6 To the extent permitted under the PPSA:
- (a) Sections 96 and 125 of the PPSA do not apply to the Agreement;
  - (b) the Buyer waives its rights to receive notices, including a financing statement or financing change statement, under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA;
  - (c) for purposes of section 157(7) of the PPSA, the Seller need not to comply with sections 132 and 137(3);
  - (d) neither the Seller nor the Buyer will disclose information of the kind mentioned in section 275(1) of the PPSA, and the Buyer will not authorise, and will ensure that no other party authorises, the disclosure of such information.
- 13. Intellectual Property**
- 13.1 The Seller acknowledges that nothing in this Agreement transfers any ownership in any Buyer Materials or Buyer's Intellectual Property Rights to the Seller.
- 13.2 The Buyer acknowledges that:
- (a) all Intellectual Property Rights owned by the Seller before and after this Agreement will remain the sole property of the Seller;
  - (b) all Intellectual Property Rights in the Seller Materials vest automatically in the Seller; and
  - (c) nothing in this Agreement transfers any ownership in Seller Materials or Seller's Intellectual Property Rights to the Buyer.
- 13.3 To the extent any Buyer Materials provided by the Buyer are embedded into Seller Materials, the Buyer grants the Seller a perpetual, royalty-free and irrevocable licence to use that part of the Buyer Materials and waives, and will procure that its relevant Personnel waive, any moral rights (including attribution of authorship and integrity).
- 14. Privacy**
- 14.1 Each Party will comply with the *Privacy Act 1988* (Cth) in relation to any personal information, as defined in that Act, received from the other Party in the performance of the Agreement.
- 14.2 The Seller may obtain from and exchange with a credit reporting body information of the Buyer, which may include personal and credit information (such as name, address, date of birth, occupation, credit applications and history) for purposes of assessing Buyer's creditworthiness and ensuring compliance with the Agreement.
- 14.3 The Buyer authorises the Seller to use the personal information of the Buyer for purposes of direct marketing until such time as the Buyer revokes that authorisation by notice to the Seller or unsubscribe electronic mail.
- 14.4 The Buyer will have the right to request from the Seller a copy of any personal or credit information that the Seller retains as well as the correction, update or destruction of such information. The Seller will comply with any request to destroy information of the Buyer except if retention of that information is required by law or otherwise.
- 14.5 The Buyer can make a privacy complaint by contacting Seller via notice or email, and the Seller will endeavour to address and respond to any complaint within a reasonable time from receipt taking into account the complexity and nature of the complaint.
- 15. Confidentiality**
- 15.1 Without limiting clause 14 (*Privacy*), neither Party will use or disclose the Confidential Information of the other Party other than as expressly permitted in this clause.
- 15.2 A Party may disclose the Confidential Information of the other Party:
- (a) with the prior written consent of the other Party;
  - (b) on a need to know basis to its Personnel for the purpose of performance under the Agreement; or
  - (c) as required by law, a court order or any stock exchange, provided the other Party is given notice and opportunity to prevent the disclosure.
- 15.3 A Party disclosing Confidential Information to its Personnel must ensure the recipient is made aware of the nature of that information and agrees to abide by the terms of this clause.
- 15.4 Each Party will protect and appropriately secure the Confidential Information of the other Party in a manner consistent with the first Party's methods of protecting its own Confidential Information.

- 15.5 The Confidential Information of a Party is the property of that Party. A Party obtains no right, title, interest or licence in or to the Confidential Information of the other Party.
- 16. Warranty**
- 16.1 The Seller warrants that:
- (a) it has the right to dispose of and transfer title to the Buyer;
  - (b) upon transfer of title in accordance with clause 9.2, the Buyer will have undisturbed possession of the Goods; and
  - (c) other than required under this Agreement, the Goods are free from security, charges or encumbrances.
- 16.2 Subject to clause 17 (*Consumer Guarantees*), where the Seller is a distributor of the Goods which are manufactured by others, the Goods are sold only with such warranties as may be given by their manufacturer.
- 16.3 To the extent that Goods supplied are covered by a manufacturer's warranty, the Seller passes on to the Buyer the benefit of the manufacturer's warranty.
- 16.4 The Buyer is responsible for installation and use of the Goods in accordance with manufacturer's instructions as necessary to ensure those warranties will remain valid and applicable.
- 16.5 The Seller will provide all reasonable assistance to the Buyer in obtaining the benefits of applicable manufacturer's warranties.
- 16.6 Where the Seller is the manufacturer, subject to clause 17 (*Consumer Guarantees*), the warranty period will be specified in either the Quotation or in a separate written document. The warranty period will start with an effective date from delivery unless otherwise agreed to in writing by the Seller.
- 16.7 In addition to this Agreement, Additional Warranties may be provided to the Buyer.
- 17. Consumer Guarantees**
- 17.1 The *Competition and Consumer Act 2010* (Cth) and similar state legislation establish consumer guarantees or warranties which cannot be excluded, including those regarding the Warranties of Title. Nothing in this Agreement operates to exclude those guarantees or warranties, but all other warranties, express or implied, are excluded.
- 17.2 Except in respect of Goods which are for personal, domestic or household use and the Warranties of Title, Seller's liability for any breach of consumer guarantees or warranties is limited, at Seller's option:
- (a) in case of Goods, to repair, replace the Goods, or reimburse the Buyer for the Goods; and
  - (b) in case of Services, to re-supply the Services, fix the breach, or reimburse the Buyer for the Services.
- 18. Limitation of liability**
- 18.1 Subject and except to the extent clause 17 (*Consumer Guarantees*) applies:
- (a) Seller's total aggregate liability for any Loss relating to the provision of the Goods and/or Services, whether based on contract, statute, tort (including negligence) or otherwise, will not exceed the amount paid by the Buyer for the Goods and/or Services in relation to which the liability arose;
  - (b) the Seller's liability is reduced to the extent that the Buyer causes or contributes, either directly or indirectly, to the Loss;
  - (c) the Seller will not be liable, in any circumstance, for any Loss arising from or in connection with any service or advice which may be offered by the Seller or its Personnel to the Buyer regarding the supply of the Goods and Services.
- 19. Force Majeure**
- 19.1 Despite any other provision of this Agreement, if and to the extent Seller's performance of any obligations under the Agreement is prevented or affected due to any act of God, strikes, lockouts, trade or workplace relations disputes, fire, breakdown, interruption of transport, governmental action or any other event or cause beyond the Seller's reasonable control, the Seller will be under no liability for non-performance of those obligations or for any Loss to the Buyer arising therefrom.
- 19.2 The Seller will notify the Buyer of the occurrence of a Force Majeure Event and the expected impacts in the performance of the Agreement as soon as reasonably practicable.
- 19.3 If a Force Majeure Event continues for more than 15 days, the Seller will be entitled, at its option, to terminate the Agreement upon notice to the Buyer.
- 20. Term and Termination**
- 20.1 The Agreement is formed and becomes effective in accordance with this Agreement and remains so until all Goods and Services have been provided and paid for in full, or until all obligations under the Agreement have been complied with, unless terminated earlier in accordance with this clause 20 (*Term and Termination*).
- 20.2 The Seller may terminate the Agreement and cancel performance of Services or delivery of Goods at any time by giving written notice to the Buyer. On giving such notice, the Seller will refund to the Buyer any amounts paid by the Buyer in respect of undelivered Goods or Services.
- 20.3 Either Party may terminate the Agreement:
- (a) for a breach which is not capable of being remedied, immediately upon notice to the other Party;
  - (b) for a breach which is capable of being remedied and which the other Party fails to remedy within 15 days (or such longer period as specified in the termination notice) after notice to do so; or
  - (c) if the other Party becomes insolvent, undergoes receivership, administration or liquidation, or if an individual, becomes bankrupt.
- 20.4 Termination does not affect a Party's rights and liabilities accrued up to and including the effective date of termination, including payment by the Buyer of any outstanding amounts.
- 20.5 Any indemnity is a continuing obligation, independent from the other obligations of the Parties under the Agreement and survives termination of the Agreement. It is not necessary for a Party to incur expense or to make payment before enforcing a right of indemnity.
- 20.6 Clauses 8 (*Delivery*), 9 (*Passing of Risk and Title*), 11 (*Payment*), 12 (*Personal Property Security*), 13 (*Intellectual Property*), 14 (*Privacy*), 15 (*Confidentiality*), 17 (*Consumer Guarantees*), 18 (*Limitation of Liability*), and 20.4 to 20.6 (*Term and Termination*) survive termination of the Agreement.
- 21. Take Up**
- 21.1 Unless the Seller terminates the Agreement under clause 20.2, the Buyer agrees to purchase from the Seller:
- (a) all Goods which have been provided up to the effective date of termination including the delivery cost;
  - (b) all Goods ordered but not delivered as at the effective date of termination;
  - (c) all current stock if the Seller was keeping stock levels at the Buyer's request;
  - (d) all Goods (either delivered or not, or kept on stock) which have been manufactured in accordance with any Specifications;
  - (e) all unfinished Goods which have been manufactured at Buyer's request and in accordance with Buyer Materials. At its option, the Buyer will:
    - (i) request in writing for such Goods to be finished and purchase the Goods at the initial Price. The Buyer acknowledges and agrees that such Goods may be delivered after the effective termination date; or

- (ii) not purchase such Goods, however, the Buyer agrees to reimburse the Seller or the manufacturer (if the Goods are not manufactured directly by the Seller) for any costs and expenses in relation to the unfinished Goods including, but not limited to, manufacturer's raw materials and labour costs and expenses.

## **22. Dispute Resolution**

- 22.1 Each Party will use their reasonable endeavours to co-operatively resolve a Dispute.
- 22.2 If a Dispute arises, then either Party may give notice to the other Party specifying the Dispute, and referring it for resolution under this clause.
- 22.3 Within 10 days after a Dispute Notice is given, each Party must nominate in writing to the other Party a representative authorised to settle the Dispute on its behalf.
- 22.4 During the 20 day period after a Dispute Notice is given (or such longer period as agreed between the Parties), each Party's nominee must use best efforts to resolve the Dispute.
- 22.5 If a Dispute is not resolved within that time, the Dispute must be referred for mediation, in accordance with the Australian Commercial Disputes Centre (**ACDC**) Mediation Guidelines. The mediator and place of mediation will be agreed by the Parties, or if the Parties fail to agree on a mediator or a place within 5 days, determined by the then current chief executive officer of the ACDC or its nominee.
- 22.6 Neither Party may start legal proceedings (except proceedings seeking interlocutory relief) in respect of a Dispute unless it has first complied with this clause, and the Dispute has not been resolved.

## **23. Notice**

- 23.1 Any notice must be:
  - (a) in writing; and
  - (b) left at or sent by post to the other Party's address or addresses as specified in the Quotation, or notified by a Party to the other from time to time.
- 23.2 A notice may be sent via email to an electronic address notified by the Parties, provided it is also delivered or sent by post to the recipient Party.
- 23.3 A notice will be deemed received:
  - (a) if delivered by hand to the recipient's address, on the date of delivery, as long as delivery is acknowledged in writing by the recipient;
  - (b) if sent by post within Australia, 3 days after the posting;
  - (c) if sent by post outside Australia, 7 days after posting; and
  - (d) if sent by email on a working day at the recipient's address, on the date of transmission, or if sent on a non-working day at the recipient's address, on the next working day (in both cases as long as the sender's email system records a successful transmission and/or receipt of delivery).

## **24. Variation**

- 24.1 The Seller may vary this Agreement from time to time upon notice to the Buyer, and such variations will apply to the Buyer, and any Purchase Order or Agreement between the Parties, after the date of the notice.

## **25. Assignment**

The Buyer will not assign, transfer or novate the Agreement, or any of its rights or obligations under the Agreement, without the prior written consent of the Seller.

## **26. Subcontracting**

The Seller may license or subcontract all or any part of its rights and obligations under this Agreement.

## **27. No Waiver**

A failure or an omission by either Party to exercise any of its rights under this Agreement is not a waiver of that right, unless such a waiver is formalised in writing, in which case it is to be interpreted restrictively.

## **28. Severance**

If any provision of this Agreement becomes illegal, invalid or unenforceable, then such provision will be read down or severed as necessary for the other provisions to remain valid and enforceable.

## **29. Relationship**

Nothing in this Agreement is intended to constitute a fiduciary relationship, an agency, a partnership, a franchise or a trust, and no Party has authority to bind any other Party.

## **30. Governing Law**

This Agreement is governed by the laws of the state in which the supply of Goods and/or Services is made, and the Parties submit to the exclusive jurisdiction of the courts of the applicable jurisdiction and any court hearing appeals from these courts.