

TERMS AND CONDITIONS OF PURCHASE

1. Scope

- 1.1 Supplier acknowledges and agrees that these Purchasing Terms and Conditions (the "Terms and Conditions") are incorporated in, and made a part of, each purchase order, requisition, work order, shipping instruction, specification or other document, whether expressed in written form, by electronic data interchange or other tangible format provided to Supplier. The Terms and Conditions will be applicable to all purchases made by TriMas Corporation, its respective subsidiaries and divisions, and any entity controlling, controlled by, or under common control with them ("Buyer"), from Supplier, whether purchases are for tooling, machines, parts, raw materials, or other various goods or services (the "Supplied Goods").
- 1.2 A Purchase Order and the Terms and Conditions will constitute the entire agreement applicable to and binding on Buyer for the Supplied Goods, and expressly excludes any application by Supplier to substitute its general terms of sale as well as any documents issued now or in the future by Supplier relating, directly or indirectly, to the Supplied Goods. Any proposal, offer, counter-offer, or other attempt by Supplier to vary any of the Terms and Conditions will be rejected, and Supplier agrees that any such additional or inconsistent terms will have no force and effect.
- 1.3 Notwithstanding the foregoing, any stenographic or clerical errors to the Terms and Conditions are subject to correction by Buyer.

2. Price, Invoicing and Conditions of Payment

- 2.1 All prices for Supplied Goods will be as stated in the Purchase Order. Supplier will be solely responsible for all transport and unloading costs, customs charges, taxes (including GST), duties, levies, excises and insurance costs, unless otherwise specified on the Purchase Order.
- 2.2 Unless otherwise agreed to in writing by Buyer, Supplier will pay all freight, storage, handling, packaging, insurance or similar charges.
- 2.3 Supplier's invoice will include all information appearing on the Purchase Order necessary for identification and origin of the Supplied Goods. The invoice will be sent to the invoicing address written on the face of the Purchase Order.
- 2.4 No payment will be made by Buyer in advance of receipt of the Supplied Goods. Unless otherwise stated on the Purchase Order and agreed in writing by Buyer, Supplier's invoice will be payable 60 days from the date of invoice. All invoicing and payments will be made through electronic data interchange.
- 2.5 Payment for Supplied Goods will not constitute final acceptance of the Supplied Goods or waive Buyer's right to reject the Supplied Goods. Buyer may reject the Supplied Goods and hold Supplier in default if, at any time, Buyer, or any of its customers, discovers the Supplied Goods to be defective in breach of any warranty under Section 12 or otherwise not conforming to the requirements of the Purchase Order.

- 2.6 In addition to any right of setoff provided by law, all amounts due to Supplier will be considered net of indebtedness of Supplier and its affiliates/subsidiaries to Buyer, and Buyer will have the right to setoff against or to recoup any amounts due to Supplier and its affiliates or subsidiaries from Buyer.
- 2.7 Supplier may not assign any accounts receivable from Buyer to third parties without the prior written approval of Buyer.
- 2.8 Supplier warrants that the prices for the Supplied Goods sold to Buyer are no less favourable than those prices Supplier currently extends to any other customer for the same or similar Supplied Goods in similar quantities. If Supplier reduces its prices to third parties during the term of a Purchase Order for the Supplied Goods, Supplier will correspondingly reduce the prices charged to Buyer.
- 2.9 Supplier warrants that the prices on the Purchase Order are fixed and that no other charges will be added without Buyer's written consent.
- 2.10 Buyer has the right to audit and review all records of Supplier to enable Buyer to verify the accuracy of the amounts charged for the Supplied Goods, assess Supplier's ongoing ability to perform its obligations under a Purchase Order and Terms and Conditions or to verify any claim submitted to Buyer in accordance with these Terms and Conditions. Supplier agrees to maintain all records relating to the Supplied Goods for a period of four (4) years following final payment under any Purchase Order.

3. Forecasts

- 3.1 Buyer may provide Supplier with estimates or forecasts of its future anticipated volume or quantity requirements for Supplied Goods. Supplier acknowledges that any estimates or forecasts are provided for informational purposes only and, like any other forward looking projections, are based on a number of economic and business factors, variables and assumptions, some or all of which may change over time.
- 3.2 Buyer makes no representation, warranty, guarantee or commitment, express or implied, regarding any estimates or forecasts provided to Supplier, including the accuracy or completeness of the estimates or forecasts.

4. Compliance

- 4.1 Without prejudice to Section 4.2, the Supplied Goods will be manufactured in compliance with the Terms and Conditions.
- 4.2 Supplier warrants that the Supplied Goods will be manufactured, sold and shipped in compliance with any and all applicable federal, state and local laws, regulations and standards in force in Australia and in the country of manufacture and sale, including those that relate to the quotations, pricing, manufacture, labelling, transportation, importation, exportation, licensing, approval, performance and/or certification of the Supplied Goods, including those relating to environmental matters, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety. Upon request from Buyer, Supplier will certify in writing its compliance with this Section 4.2.

- 4.3 At the request of Buyer, Supplier will provide an appropriate certificate stating the country of manufacture of the Supplied Goods.
- 4.4 Supplier will comply with all quality requirements as specified by Buyer, including, but not limited to, ISO/QS 9001, ISO/QS 14001 and ISO/TS 16949.
- 4.5 Supplier will participate in productivity initiatives in order to improve quality of the Supplied Goods, increase customer satisfaction or reduce costs of the Supplied Goods.

5. Technical Information

- 5.1 Supplier will create, maintain, update and provide to Buyer, all technical information relating to the Supplied Goods, including information subject to industrial or intellectual property rights and information that may relate to tooling, machines or equipment, software, works of authorship, computer programs and databases (including object code, micro code, source code and data structures) and all enhancements, modifications and updates to such information (the "Technical Information"). The Technical Information will not be subject to any use or disclosure restriction.
- 5.2 Upon a breach by Supplier of these Terms and Conditions, Supplier grants to Buyer a royalty free, fully paid license for all Technical Information in order to manufacture, or have manufactured, the Supplied Goods. At Buyer's request, Supplier will transfer to Buyer ownership of the tooling and equipment necessary to manufacture the Supplied Goods, whether or not such tooling and equipment has been paid for by Buyer.
- 5.3 Supplier agrees not to assert any claim (other than patent infringement) against Buyer, Buyer's customers or their respective suppliers with respect to any Technical Information that Supplier discloses under the Terms and Conditions.
- 5.4 Buyer will own all right, title and interest in any idea, invention, concept, discovery, work of authorship, patent, copyright, trademark, trade secret, know-how or other intellectual property developed by Supplier under these Terms and Conditions. Supplier will assist Buyer in perfecting this right, title and interest and will execute and deliver all documents reasonably requested by Buyer in order to perfect, register or enforce the same. Buyer will reimburse any associated costs incurred by Supplier in assisting Buyer.
- 5.5 If a third party asserts claims of actual or alleged infringement of any Technical Information relating to the Supplied Goods, Supplier, at no expense to Buyer, will obtain for Buyer and its customers, the right to manufacture, use and sell the Supplied Goods or will substitute an equivalent item acceptable to Buyer, and will reimburse Buyer for any costs incurred related to this Section 5.5.
- 5.6 In respect of any claim or suit for alleged infringement of any Intellectual Property Rights resulting from or arising in connection with the Terms and Conditions, Supplier will:
 - a) indemnify and hold Buyer harmless from and against any and all loss, liability or expense which Buyer may suffer;
 - b) provide Buyer with any assistance necessary to conduct a defence, or if required by Buyer will at its own expense conduct a defence; and

- c) either:
 - i) modify, alter or substitute any infringing part of the Supplied Goods at its own expense in order to avoid any continuing infringement of any Intellectual Property Rights; or
 - ii) immediately procure for Buyer the authority to continue the use and possession of any Supplied Goods which would otherwise infringe any Intellectual Property Rights.

5.7 The Supplier represents and warrants that:

- a) it has all necessary licences in relation to the Intellectual Property Rights in the Supplied Goods required for use of the Supplied Goods by Buyer; and
- b) where required in order for Buyer to use the Supplied Goods in the manner contemplated by the Terms and Conditions, Supplier will procure for Buyer any necessary licences and grant Buyer any necessary sub-licences in relation to the Intellectual Property Rights in the Supplied Goods.

5.8 The Supplier indemnifies Buyer, its directors, officers and employees against all liability for any infringement of the Moral Rights of any person involved in creating the Supplied Goods. At the request of Buyer, Supplier will provide an indemnity to a similar effect to any subsequent owner or licensee of the Supplied Goods and to any subsequent purchaser of Buyer's business.

6. Packaging and Transport

6.1 Unless otherwise provided in a Purchase Order, the Supplied Goods must be packed and packaged to ensure their safe delivery in accordance with the Terms and Conditions, industry standards and where incorporated, Buyer's packaging specifications.

6.2 Buyer may, at any time, change packaging or transport requirements. Supplier will be responsible for any damage to the Supplied Goods arising from packaging or transport.

6.3 Supplier will provide all Material Safety Data Sheets and "hazardous substance" warnings related to all shipments of Supplied Goods that constitute hazardous materials, together with special handling instructions advising Buyer and third parties, including transportation carriers, as to the degree of care and precaution that will prevent bodily injury or property damage in handling, transporting, processing, using, recycling or disposing of the Supplied Goods.

6.4 All packing materials shall become the property of Buyer upon delivery and may be disposed of or otherwise dealt with at the sole discretion of Buyer.

6.5 The Supplied Goods, as packaged, will be labelled as required under federal, state and local regulations, regulations from the country of manufacture and supply will include any storage requirements, Buyer's Purchase Order number, description of the Supplied Goods, and quantity and the gross or net weight of the Supplied Goods. Supplier will

include a bill of lading consisting of delivery and identification information for the Supplied Goods, including a clear description of the origin of the Supplied Goods.

7. Ownership of the Supplied Goods

- 7.1 Notwithstanding Section 9, all right, title and interest in and to the Supplied Goods will be transferred to Buyer immediately upon its identification in the Purchase Order. Supplier will not impose or permit to be imposed any lien, encumbrance or security interest or similar reservation of title on the Supplied Goods.
- 7.2 If Buyer purchases or finances all or part of the raw materials or semi-finished products for incorporation into the Supplied Goods, the raw materials and semi-finished products will become the property of Buyer immediately upon payment. Supplier, as bailee, will identify the raw materials and semi-finished products by plainly marking them as Buyer owned property.
- 7.3 All supplies, materials, tools, jigs, dies, gauges, fixtures, moulds, patterns, equipment, ancillary products, materials and other items (collectively "Tools") purchased by or furnished by Buyer, in whole or in part, or by third parties on Buyer's behalf, to Supplier under these Terms and Conditions, or for which Supplier has been reimbursed by Buyer, will remain the property of Buyer and will not be pledged to any third party. Supplier will provide Buyer with drawings, technical specifications, FMEA's and control plans for the Tools. Supplier will bear the risk of loss and damage to the Tools.
- 7.4 The Tools will at all times
- a) be properly stored, operated and maintained by Supplier;
 - b) not be used by Supplier for any purpose other than the performance of these Terms and Conditions;
 - c) be deemed to be personal property of Buyer, not a fixture;
 - d) be conspicuously identified as property of Buyer with relevant part numbers;
 - e) not be commingled with other property of Supplier or with that of a third party; and
 - f) not be moved from Supplier's premises without Buyer's prior written approval.
- 7.5 Supplier will insure the Tools for damage or loss (including theft) in an amount not less than replacement value and will maintain general liability insurance regarding operation of the Tools in amounts and coverage reasonable in the circumstances and acceptable to Buyer.
- 7.6 Upon the request of Buyer, the Tools will be delivered to Buyer by Supplier, either:
- a) F.O.B. transport equipment at Supplier's plant, properly packed and marked in accordance with the Terms and Conditions and requirements of the carrier selected by Buyer; or
 - b) to any location designated by Buyer,

provided that Buyer will pay Supplier the reasonable cost of delivering the Tools to the location.

Buyer has the right to enter Supplier's premises at all reasonable times to inspect the Tools and Supplier's records with respect to the Tools.

- 7.7 Buyer does not guarantee the accuracy of any Tools or the availability or suitability of any Tools furnished by Buyer to Supplier, including any warranty, either express or implied, as to fitness, condition, merchantability, design or operation or fitness for a particular purpose. Supplier agrees to check carefully and approve all Tools supplied by Buyer prior to use. Supplier will assume all risk, loss, damages, injuries or expenses arising, either directly or indirectly, from the use, maintenance, repair of the Tools, including any interruption of service or loss of business, profits or any other indirect, special or consequential damage and/or personal injury or death.
- 7.8 In any dispute involving ownership of Tools, there is a rebuttable presumption that Buyer is the sole owner of the Tools and Supplier grants Buyer a security interest in the Tools to secure Supplier's obligations under these Terms and Conditions. Supplier authorizes Buyer, at Buyer's sole option, to file financing statements to evidence Buyer's interest in the Tools.
- 7.9 Supplier grants Buyer an exclusive, irrevocable option to purchase any Tools owned by Supplier and used in the manufacture of the Supplied Goods at a price agreed upon in writing by the parties, but in no event greater than the replacement cost of the Tools less depreciation. Buyer may exercise this option at any time, provided that Supplier does not utilize the Tools owned by Supplier for third parties' goods. Supplier will obtain any applicable waiver, release or approval from financing sources so that Buyer may exercise its rights under this Section 7.9.

8. Delivery

- 8.1 Buyer may inspect and check all the Supplied Goods upon delivery where practicable.
- 8.2 Unless otherwise specified by Buyer, delivery of the Supplied Goods will be F.O.B Buyer facility as indicated on the Purchase Order. Buyer will have the right, by written notice, to suspend work or make changes from time to time in the Supplied Goods or their delivery to be provided by Supplier under a Purchase Order.
- 8.3 Supplier will take all measures necessary to meet the delivery date for the Supplied Goods and comply with the Terms and Conditions. Deliveries will be made in the quantities, on the dates, and at the times specified by Buyer in the Purchase Order.
- 8.4 Supplier will not fabricate, assemble or ship any Supplied Goods, or procure materials or Tools, except to the extent authorized by the Purchase Order. Buyer will not pay for any Supplied Goods, materials, Tools and related costs that are not authorized pursuant to the Buyer's Purchase Order.
- 8.5

- a) Supplier agrees that time is of the essence. Supplier further agrees that if Supplier fails to deliver Supplied Goods pursuant to the Purchase Order, Buyer may:
 - i) obtain substitute or replacement Supplied Goods without notice to Supplier, and reject any late Supplied Goods tendered by Supplier, even if conforming; and/ or
 - ii) elect to terminate the Purchase Order by written notice to Supplier.
- b) Supplier will be responsible for all general, consequential, and incidental damages incurred by Buyer as a result of Supplier's failure to meet delivery schedules with conforming goods, including but not limited to, the cost of any line shutdown, the cost of obtaining Supplied Goods from an alternate source and expedited or premium freight or transportation costs.
- c) In addition to the remedies in Section 8.5a), Buyer may apply late delivery charge of 10% of the invoice amount against any invoice, for all Purchase Orders for which the Supplied Goods were delivered late to Buyer.
- d) Buyer's actions in obtaining substitute or replacement products will not constitute an election of remedies, nor will it in any way limit the rights and remedies of Buyer under the Purchase Order for breach by Supplier.
- e) Supplier acknowledges that the 10% charge in Section 8.5c) represents a genuine pre-estimate of Buyer's loss for late delivery.

8.6 Supplier will provide written notice to Buyer immediately of any actual or potential labour dispute, and all related information relating to the dispute, which may delay or threaten to delay the timely performance of Supplier under a Purchase Order. Buyer may purchase Supplied Goods from a third party immediately upon receipt of notice from Supplier, if Buyer deems it necessary, in its sole discretion.

8.7 [Supplier will notify Buyer 6 months in advance of the expiration of any current labour contract(s). Prior to the expiration of any labour contract, Supplier will store, at its expense, a minimum 30 day inventory of finished Supplied Goods at a warehouse unaffected by the labour contract.]

9. Risk of Loss.

Risk of loss with respect to the Supplied Goods will remain with Supplier until the Supplied goods have been delivered to and accepted by Buyer, or an agent or consignee duly designated by Buyer, at the location indicated on the Purchase Order.

10. Changes.

- a) Buyer will have the right, by written notice, to suspend work or make changes from time to time in the Supplied Goods to be provided by Supplier under a Purchase Order, or the delivery thereof.

- b) Unless subject to Section 13, Buyer's changes cause an increase or decrease in the cost of or time required for performance of a Purchase Order by Supplier, an equitable adjustment will be negotiated promptly and in good faith by the parties, and the Purchase Order will be modified in writing accordingly. Supplier must submit in writing any claim for adjustment to Buyer within 30 days from the date that notification of the change is received by Supplier. Upon approval of the claim by Buyer, any excess or obsolete Tools or Supplied Goods set forth in the claim will become the property of Buyer, to dispose or utilize as Buyer deems necessary.
- c) Notwithstanding the foregoing, Supplier will be required to continue to perform under the revised Purchase Order.

11. Acceptance of Supplied Goods

- 11.1 The Purchase Order will be deemed to have been accepted by Supplier and constitute a binding contract upon the earlier of Supplier's:
- a) written acknowledgment; or
 - b) shipment of the Supplied Goods.

Buyer may revoke its offer or terminate a Purchase Order without liability to Supplier at any time before Buyer receives actual notice of Supplier's acceptance.

If the Purchase Order is deemed to be accepted based on a prior offer by Supplier, such acceptance is limited to and expressly made conditional on assent to the express terms set forth in the Purchase Order.

- 11.2 Buyer and its customers will have the right to enter Supplier's premises at reasonable times to verify that the Supplied Goods conform to the Purchase Order. Supplier agrees to provide all supporting documentation requested by Buyer in the course of the investigation. Final acceptance of the Supplied Goods by Buyer will not be conclusive with respect to latent defects or misrepresentations.
- 11.3 Buyer reserves the right to reject or revoke acceptance of nonconforming Supplied Goods, which includes but is not limited to defects or defaults revealed by inspection, analysis or subsequent manufacturing operations, even though such items previously may have been accepted, non-compliance with the Purchase Order or non-compliance with the date and hours of delivery at any time.
- 11.4 In addition to Section 11.3 and any other remedies Buyer may have, at its option, Buyer may
- a) correct or have corrected the non-conforming Supplied Goods at Supplier's expense;
 - b) reject and return the Supplied Goods at Supplier's own risk and expense; or
 - c) instruct Supplier to retrieve the non-conforming Supplied Goods at its expense within 8 days of notification of rejection or revocation of acceptance.

- 11.5 Buyer will be permitted to dispose of the Supplied Goods upon Supplier's failure to retrieve the non-conforming Supplied Goods. If defects or deficiencies in the Tools provided by Supplier are discovered by Buyer prior to final acceptance, Buyer will be entitled to, among other remedies, a return of all sums paid to date under this contract.
- 11.6 Supplier will be responsible for the design and manufacture of the Supplied Goods to the extent designated by Buyer in the Purchase Order or as otherwise agreed to in writing by the parties, regardless of any assistance provided by Buyer or approval by Buyer.

12. Express Warranty.

12.1 Supplier represents and warrants that during the Warranty Period, the Supplied Goods will:

- a) strictly conform with the Purchase Order, including instructions, advertisements, statements on containers or labels, descriptions and samples, then current release/revision levels of specifications and drawings;
- b) be new (unless otherwise agreed in writing) and of premium quality;
- c) be free from damage, defects and faults;
- d) be fit for Buyer's purpose, including the specified performance in the component, system, subsystem and environment in which the Supplied Goods are or reasonably may be expected to perform or, if Buyer's purpose is not known, for the purpose for which the Supplied Goods are commonly used;
- e) be of merchantable quality; and
- f) correspond with the description of the Supplied Goods by Supplier and conform with any samples supplied to Buyer,

fair wear and tear excepted, and provided that Buyer ensures that the Supplied Goods are properly maintained in accordance the manufacturer's recommended maintenance and scheduled servicing.

12.2 Supplier represents and warrants that:

- a) it has, or by no later than the date of delivery will have, good title to, and is, or by no later than the date of delivery will be, the sole beneficial owner of, the Supplied Goods;
- b) it will deliver the Supplied Goods to Buyer free of any charge or encumbrance;
- c) as at the date of the Terms and Conditions, it is not aware of any actual or threatened claim for infringement of Intellectual Property Rights, arising out of the manufacture, sale or use of the Supplied Goods; and
- d) it and Supplier's employees are in possession of all requisite licenses, permits and authorities necessary to lawfully perform the Terms and Conditions.

- 12.3 The warranties in this Section 12 and any other warranties given by Supplier in relation to the Supplied Goods, are in addition to:
- a) any warranty or service guarantee supplied by the manufacturer of the Supplied Goods (if applicable); and
 - b) any warranty implied by law except that no course of dealing or usage of trade will be applicable unless expressly incorporated into these Terms and Conditions by a writing signed by the parties.
- 12.4 Supplier must immediately notify Buyer in writing of any circumstances of which Supplier becomes aware which may affect the quality or integrity of the Supplied Goods already delivered to Buyer.
- 12.5 Supplier's performance will be in strict accordance with these Terms and Conditions.
- 12.6 Supplier may not substitute or modify any component of the Supplied Goods without Buyer's consent.
- 12.7 Supplier represents and warrants that, notwithstanding that Buyer may consent to the substitution or modification of some component of the Supplied Goods under Section 10, no such substitution or modification will:
- a) adversely affect the quality of the Supplied Goods;
 - b) alter the presentation of the Supplied Goods in any material respect; or
 - c) otherwise materially affect or prejudice the rights of Buyer under the Terms and Conditions.
- 12.8 These warranties will survive the expiration or termination of the Terms and Conditions and will apply to Buyer, its successors, assigns, customers and the end-users of Buyer's Supplied Goods. These warranties may not be limited or disclaimed by Supplier.
- 12.9 Buyer's approval of Supplier's design, material, process, drawing, specifications or the like for the Supplied Goods will not be construed to relieve Supplier of strict compliance with the warranties in this Section 12.
- 12.10 Notwithstanding the expiration of the Warranty Period, if Buyer, its customers or the manufacturer of the vehicles (or other finished product) on which the Supplied Goods, or any parts, components or systems incorporating the Supplied Goods, are installed, voluntarily or pursuant to a government mandate, makes an offer to owners of such vehicles to provide remedial action to address a defect that relates to motor vehicle safety or the failure of the vehicle to comply with any applicable law, safety standard or guideline (a "recall"), Supplier will nonetheless be liable for costs and damages associated with the recall to the extent that the costs and damages are based upon a reasonable determination that the Supplied Goods fails to conform to these Terms and Conditions.

13. Product Support.

Supplier warrants that the Supplied Goods, including the sub-assemblies and spare parts, will be made available by Supplier to Buyer and its customers for 10 years after the date of final shipment of the Supplied Goods under the Terms and Conditions. During this period, Supplier will continue to provide technical support and service at the same level as presently provided.

14. Indemnification

- 14.1 To the fullest extent permitted by law, Supplier will indemnify, hold harmless and defend Buyer and its affiliated companies, their directors, officers, employees, agents and customers ("Indemnitees") from and against any loss, liabilities, costs, expenses, suits, legal actions, claims, investigations, or any threat of same, and all other obligations and proceedings, including without limitation, all judgments rendered against, and all fines and penalties imposed upon Indemnitees ("Claims"), and any cost incurred in connection with any Claim (including but not limited to fees and expenses of lawyers and other professionals incurred in investigating or defending the same and any cost of a product recall) ("Liabilities") arising out of a breach of the Purchase Order or Terms and Conditions. However, Supplier's obligation to indemnify Buyer will not apply to any Liabilities arising from Buyer's sole negligence.
- 14.2 The indemnities contained in this Section survive the expiry or termination of this agreement.

15. Insurance.

- 15.1 Supplier will maintain occurrence based insurance coverage in amounts not less than the following:
- a) Worker's Compensation – Statutory Limits for the state or states in which this agreement is to be performed;
 - b) Public and Products Liability – \$20,000,000 for any one incident;
 - c) Third Party Motor Vehicle Liability – \$10,000,000 combined bodily injury/property damage per occurrence; and
 - d) The above policies (a) to (c) for any sub-contractors engaged.
- 15.2 Supplier will furnish certificates of insurance setting forth the amounts of coverage, policy numbers and dates of expiration for insurance maintained by Supplier which will name Buyer as an additional insured. Such certificates will provide that Buyer will receive 30 days' prior written notification from the insurer of any termination or reduction in the amount or scope of coverage. Supplier's insurance will be primary and must offer a blanket waiver of subrogation endorsement. Supplier's purchase of insurance coverage and the furnishing of certificates of insurance will not release Supplier of its obligations or liabilities under these Terms and Conditions.
- 15.3 In the event of Supplier's breach of this Section 15, Buyer may in its sole and absolute discretion:

- a) cancel the undelivered portion of any Supplied Goods covered by a Purchase Order and not be required to make further payments except for payments associated with conforming Supplied Goods delivered or services rendered prior to cancellation; or
- b) take out and maintain the necessary insurances at Supplier's expense, and the costs thereof shall be a debt due to Buyer, provided that Buyer shall be under no obligation to do so and Supplier shall not be relieved of its obligation to take out any of the insurances required under the Terms and Conditions if Buyer does so.

16. Confidentiality.

- 16.1 Each Party acknowledges that the Confidential Information of the other Party is confidential and valuable to the other Party.
- 16.2 All information provided to Supplier by Buyer under these Terms and Conditions will remain Buyer's property and be considered confidential by Supplier. Supplier will take all necessary measures to ensure that neither Supplier nor its employees, agents, suppliers or authorized subcontractors, communicate such Confidential Information to any third party without Buyer's prior written consent and that the information is used only for the purpose submitted.
- 16.3 Without obtaining the prior written consent of Buyer, Supplier will not advertise or publish the fact that Supplier has contracted to furnish Buyer with Supplied Goods, or use any trademarks or trade names of Buyer in Supplier's advertising or promotional materials.
- 16.4 A Party may disclose the other Party's Confidential Information to the extent required by law or by a government or governmental body, authority or agency having authority over the Party, provided that the disclosing Party first notifies the other party of its intention to disclose the Confidential Information so that the other Party has an opportunity to protect the confidentiality of the Confidential Information.
- 16.5 A Party must not, unless with the prior written consent of the other Party or as otherwise permitted by the Terms and Conditions, disclose the other Party's Confidential Information.
- 16.6 A Party may only use Confidential Information for the purposes of performing obligations or exercising or enforcing rights under the Terms and Conditions.
- 16.7 Buyer may disclose any Confidential Information to its professional legal advisers, accountants and other professional advisers for the purposes of Section 16.5 and may also disclose the terms of the Terms and Conditions to its related bodies corporate (as defined under the Corporations Act), auditors, insurers, accountants and other professional advisers.
- 16.8 Upon the request of Buyer, Supplier agrees to return to Buyer all information, including all copies thereof, confidential or otherwise, related to the Terms and Conditions.
- 16.9 These confidentiality requirements will be maintained for the duration of performance under the Terms and Conditions and for a period of 5 years thereafter.

17. Default by Supplier.

17.1 Buyer may terminate any Purchase Order in the event of any of the following:

- a) Supplier is in material breach of any term of the Terms and Conditions and such breach is not remedied (if capable of being remedied) within seven (7) days of written notice by Buyer to Supplier;
- b) any representation, warranty or statement made by, or repeated by, Supplier, in or in connection with the Terms and Conditions is untrue or misleading (whether by omission or otherwise) in any material respect;
- c) Supplier ceases or threatens to cease conducting its business in the normal manner;
- d) an Insolvency Event of Supplier; or
- e) if Supplier:
 - i) sells, or offers to sell, a material portion of its assets;
 - ii) sells or exchanges, or offers to sell or exchange, or causes to be sold or exchanged, a sufficient amount of its stock or other equity interests that effects a change in the control of Supplier; or
 - iii) executes, or otherwise becomes subject to, a voting or other agreement or trust that effects a change in the control of Supplier.

17.2 In the event of termination under Section 17.1, Buyer will not be liable to Supplier for any amount, except for conforming Supplied Goods that have been delivered to Buyer prior to termination, and Supplier will be liable to Buyer for all damages sustained by reason of the default which gave rise to the termination.

17.3 If notice is given to Supplier pursuant to Section 17.1a), Buyer, in addition to terminating the Terms and Conditions:

- a) may return any nonconforming Supplied Goods to Supplier;
- b) shall be regarded as discharged from any further obligations under the Terms and Conditions; and
- c) may pursue any additional or alternative remedies provided by law.

18. Termination

18.1 Buyer reserves the right to terminate any Purchase Order, in whole or in part, at any time without liability, at Buyer's convenience. Such termination will not constitute a default by Buyer.

18.2 In the event of such termination by Buyer, Supplier, its' suppliers and subcontractors, will:

- a) immediately stop all work on such Purchase Order; and
 - b) upon request by Buyer, transfer title and deliver all finished goods, work in process and/ or raw materials which Supplier produced or acquired in connection with such Purchase Order.
- 18.3 In the event of a termination by Buyer under this Section 18, Supplier will be reimbursed for:
- a) the Purchase Order price for all finished goods or performed services which conform to the Purchase Order and are delivered to Buyer; and
 - b) Supplier's reasonable actual cost of work in process or raw materials which Supplier produced or acquired in connection with such Purchase Order and which Supplier cannot reasonably use in its operations within 90 days after the date of termination.
- 18.4 Supplier will furnish any claim for reimbursement of costs within 30 days after termination or any such claim will be deemed to have been waived. Supplier will not be paid for any work performed after receipt of the notice of termination, or for any costs incurred by Supplier's suppliers or subcontractors which Supplier could reasonably have avoided or that were not authorized pursuant to a valid Purchase Order or material release by Buyer.
- 18.5 Buyer's obligation to Supplier upon termination under this Section 18, if any, will be limited to the express provisions of this section.
- 18.6 Without limiting the foregoing, in no event will Buyer be liable for any lost profits, cancellation charges, or incidental or consequential damages.
- 18.7 Supplier may not terminate a Purchase Order once accepted and at all times must continue to deliver the Supplied Goods in accordance with the Purchase Order.

19. Applicable Law and Jurisdiction.

These Terms and Conditions will be governed by the laws of the country of Australia.

The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms and Conditions. If any provision is or becomes invalid or unenforceable under any law, the remaining provisions will be in full force and effect as written.

20. Work on Premises.

- 20.1 The Supplier (including any delivery agents) must, and warrants that it will, comply with and ensure that its personnel comply with all relevant occupational health and safety legislation, regulations, Buyer's policies and procedures, Codes of Practice and Australian Standards applicable or relevant and in particular to ensure that its personnel, Buyer and any other persons are not exposed to any uncontrollable or inadequately controlled hazards or risks.

- 20.2 If Supplier's work under these Terms and Conditions involves operations by Supplier on Buyer premises or one of its customers, Supplier will take all necessary precautions to prevent injury to any person or property during the progress of such work.
- 20.3 In addition to its obligations under Section 15.1, Supplier will maintain such necessary insurance policies to protect Buyer from these risks and from any claims under applicable worker's compensation and occupational disease acts.

21. Goods and Services Tax

If, and to the extent, any supply of the Supplied Goods under the Terms is a taxable supply within the meaning of the GST Law, the price for the Supplied Goods will be increased to include GST payable by Supplier in respect of the supply.

All rebates, discounts or other reductions in price will be calculated on the GST exclusive price.

The parties agree that:

- a) the parties must be registered persons within the meaning of the GST Law;
- b) Supplier must provide tax invoices and, if applicable, adjustment notes to Buyer in the form prescribed by or for the purposes of the GST Law; and
- c) costs required to be reimbursed or indemnified exclude any amount that represents GST for which an input tax credit within the meaning of the GST Law can be claimed.

22. Miscellaneous Provisions.

22.1 Assignment.

Supplier will not assign, in whole or in part, any Purchase Order or delegate the performance of its duties under any Purchase Order or these Terms and Conditions without the prior written consent of Buyer. Any assignment or delegation without the prior written consent of Buyer, at the option of Buyer, will serve as a cancellation of the Purchase Order. Any consent by Buyer to an assignment will not waive Buyer's right to recoupment from Supplier or its assigns for any claim arising out of these Terms and Conditions. If Buyer agrees to the assignment of the Purchase Order, in whole or in part, Supplier will remain solely liable to Buyer for the adherence of the assignee to these Terms and Conditions.

22.2 Force Majeure.

Any delay or failure of either party to perform its obligations will be excused if caused by an extraordinary event or occurrence beyond the control of the nonperforming party and without the nonperforming party's fault or negligence, such as acts of God, fires, floods, windstorms, explosions, riots, natural disasters, wars, terrorist attacks and sabotage. Written notice of the delay, including the anticipated duration of the delay, must be given

by the nonperforming party within 10 days of the event. During the period of any delay or failure to perform by Supplier, Buyer, at its option, may purchase Supplied Goods from other sources and reduce its schedules to Supplier by such quantities, without liability to Buyer, or cause Supplier to procure the Supplied Goods from other sources in quantities and at times requested by Buyer and at the price set forth in the Purchase Order. If requested by Buyer, Supplier will, within 5 days of such request, provide adequate assurance that the delay will not exceed a period of time that Buyer deems appropriate. If the delay lasts more than the time period specified by Buyer, or Supplier does not provide adequate assurance that the delay will cease within the time period, Buyer may, among its other remedies, immediately cancel the Purchase Order and seek damages against Supplier for non-performance.

22.3 Limitation on Buyer's Liability/ Waiver.

In no event will Buyer be liable to Supplier for anticipated profits or for incidental or consequential damages. Buyer's liability for a claim of any kind or for any loss or damage arising out of or in connection with or resulting from these Terms and Conditions, or from any performance or breach, will in no case exceed the price allocable to the Supplied Goods giving rise to the claim. No action or inaction by Buyer to enforce the Terms and Conditions will constitute a waiver of compliance with any of the provisions in these Terms and Conditions.

22.4 Relationship of Parties.

Supplier and Buyer are independent contracting parties and nothing in these Terms and Conditions will make either party the agent or legal representative of the other for any purpose, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

22.5 Continuing Obligations.

The obligations of Supplier under Sections 2.10, 5.4, 5.5, 7.5, 22.3 and 22.5 and Sections 4, 12, 13, 14 and 16 will survive the expiration, non-renewal or termination of any Purchase Order.

22.6 Amendment.

These Terms and Conditions may not be varied or modified in any manner, without the prior written consent of both parties.

22.7 Severability.

If any provision of the Terms and Conditions is unenforceable or void either in whole or in part for any reason, then that provision (or part) is deemed to be deleted without in any way affecting the validity or enforceability of any other provision.

22.8 Governing Law.

Any dispute arising out of the Terms is governed by the laws of the State or Territory in Australia where the Purchase Order was received by Supplier and Buyer submits to the

jurisdiction of and agrees to be bound by the Federal Courts of Australia and of that State.

The United Nations Convention on Terms for the International Sale of Products will not apply to these Terms.

22.9 No gifts.

The Supplier must not give any employees, officers or agents of Buyer (or their families) any gifts, tips or other gratuities.

22.10 Interpretation.

The following words have the following meanings in these Conditions, unless the context requires otherwise:

Confidential Information means any information which is taken by any provision of this Agreement to be confidential, or which the disclosing party makes the receiving party aware is considered by the disclosing party to be confidential, or which is by its nature confidential, or which the receiving party knows or ought to know is confidential, whether in any medium or form or conveyed by any means, and includes, but is not limited to any information relating to:

- a) the composition, design and supply of the Supplied Goods;
- b) the personnel, policies and business strategies of Buyer; and
- c) the terms upon which the Supplied Goods have been supplied or installed in accordance with this Agreement,

but excludes any such information which was at the date of the Terms and Condition or becomes subsequent to that date part of the public domain otherwise than through a breach of confidence or was acquired by a party from a third party entitled to disclose it.

Corporations Act means the *Corporations Act 2001* (Cth).

FMEA means failure mode and effects analysis, a method (first developed for systems engineering) that examines potential failures in products or processes.

GST has the same meaning as in the GST Law.

GST Law means the A New Tax System (Products and Services Tax) Act 1999 (Cth).

Insolvency Event means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act)] or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act), entering into a

compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event, except to reconstruct or amalgamate while solvent.

Intellectual Property Rights means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trade mark, design, patents, circuit layouts, plant varieties, business and domain names, inventions and Confidential Information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether or not registrable, registered or patentable.

ISO means International Organization for Standardization.

Moral Rights means any of the rights described in Article 6b of the Berne Convention for the Protection of Literary and Artistic Works 1886, being droit moral, and other analogous rights arising under statute, including the *Copyright Act 1968* (Cth), that exist, or that may come to exist, anywhere in the world in the Supplied Goods.

Purchase Order means a purchase order issued by Buyer to Supplier.

Supplier means [*insert Supplier details*].

Warranty Period means the longer of:

- a) 48 months from the date of first use of the Supplied Goods by Buyer or acceptance by Buyer, whichever occurs later; or
- b) if the Supplied Goods are incorporated, in whole or in part, into products sold by Buyer to third parties, the latter of:
 - i) 18 months after acceptance by such third parties;
 - ii) the time period of warranty that such third parties give to their customers; or
 - iii) the date on which any longer or broader federal, state or local law, regulations may require, including those regulations of countries in which the Supplied Goods may be manufactured, installed, used or sold.