

DEWAR ELECTRONICS PTY LIMITED.

(ACN 005 592 370) (ABN 86 005 592 370)

32 Taylors road, Croydon, Vic, 3136

Australia

Phone: +61 3 9725 3333



TERMS AND CONDITIONS OF SALE

DEFINITIONS

Customer means the person or persons, company or business entity who orders goods from the Seller

Confidential Information means any written or oral information of a technical, business or financial nature or which is taken by any provision of these Terms of Sale to be Confidential Information, or which the Seller makes the Customer aware is considered by the Seller to be confidential and proprietary, and includes all information that is personal information for the purposes of the Privacy Act 1988 (Cth), but does not include information which the Customer can establish:

- was in the public domain when it was given to the Customer;
- becomes, after being given to the Customer, part of the public domain, except through disclosure contrary to these Terms of Sale;
- was in the Customer's possession when it was given to the Customer and had not been acquired in some other way (directly or indirectly) from the Seller; or
- was lawfully received from another person who had the unrestricted legal right to disclose that information free from any obligation to keep it confidential.

Goods means the goods purchased by the Customer from the Seller as specified by the Seller in the Order.

GST has the meaning given to that term in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Intellectual Property Rights means all present and future rights throughout the world conferred by statute, common law (including passing off) or equity in or in relation to inventions, discoveries, innovations, know how, technical information and data, prototypes, processes, improvements, patent rights, circuitry, drawings, plans, specifications, copyright, trade mark rights, design rights, plant variety rights and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether or not registrable, registered, or patentable. These include all rights in all applications to register these rights, all renewals and extensions of these rights and all rights in the nature of these rights.

Order means a Purchase Order provided by the Customer to the Seller.

PPSA means Personal Property Securities Act 2009 (Cth).

PPSR means the Personal Property Securities Register established pursuant to the PPSA.

Purchase Order means a written document provided by the Customer to the Seller, containing the delivery date, delivery point, the Goods to be purchased and the price for Goods to be purchased.

Quote means any quote provided by the Seller to the Customer that remains valid for 30 days, unless otherwise specified by the Seller.

Secured Property means all Goods that are supplied to the Customer by the Seller (whether now or in the future).

Security Interest is defined in section 12 of the PPSA.

Seller means Dewar Electronics Pty Limited (ACN 005 592 370), including its successors and assigns.

Services means any service provided by the Seller to the Customer as specified by the Seller in the Order.

Terms of Sale means these terms and conditions of sale which apply to every sale or licensing of products, items and equipment and services made by the Seller.

1. GENERAL

1.1 These Terms of Sale apply to the sales of goods and services manufactured, assembled or supplied by the Seller unless varied, amended or cancelled in writing signed by an officer or other duly authorised representative of the Seller.

1.2 Each Order from the Customer constitutes an offer by the Customer to acquire Goods from the Seller on these Terms of Sale. An order may be accepted or rejected by the Seller at any time.

1.3 If the Customer places an Order with the Seller for Goods or enters into a contract with the Seller and the Goods are provided to the Customer, or the Customer makes any payment, the Customer is taken to have accepted the supply of such Goods on these Terms of Sale to the exclusion of all other terms and conditions.

1.4 The Seller's failure to object to any term or condition contained in any communication, whether written or oral from the Customer, shall not be deemed a waiver of these Terms of Sale.

1.5 If there is any inconsistency between these Terms of Sale of any document, offer or communication by or from the Customer, these Terms of Sale shall prevail to the extent of the inconsistency unless otherwise agreed by the Seller in writing.

1.6 Each Order placed by the Customer shall be and be deemed to be a representation by it, made at the time that it is solvent and able to pay all of its debts as and when they fall due. Failure to pay the Seller in accordance with these Terms of Sale shall be and be deemed to be conclusive evidence that the Customer had no reasonable grounds for making the representation hereof and that the representations were unconscionable, misleading and deceptive.

2. QUOTES BY THE SELLER

2.1 Subject to Clause 4.4, unless otherwise specified by the Seller in writing at the time of providing a Quote, all quotations made by the Seller are valid for the period specified in the Quote, or if no such period is specified, for a period of thirty (30) days from the date of the Quote. Each Quote is subject to written confirmation. Verbal quotations are subject to written confirmation by the Seller which will be given when requested.

2.2 Goods which are quoted ex stock are subject to prior sale and any delivery time quoted is made without commitment.

2.3 Notwithstanding the above, any quotation provided by the Seller is an invitation to treat only and not an obligation to sell or offer and the Seller reserves the right at its option, to accept or reject any Orders received.

2.4 The prices quoted by the Seller in the Quote are only for the supply of those Goods specified in the Quote and do not apply to any lesser quantities or additional Goods supplied by the Seller unless specified in writing by the Seller prior to supply.

3. ORDER ACCEPTANCE

3.1 The Seller may require the Customer to place a written Order for the Seller's Goods. All Quotes given and Orders accepted by the Seller are so given or accepted on and subject to these Terms of Sale.

3.2 The Customer must purchase at least the minimum order value and the minimum order quantity per line item determined by the Seller and may be set from time to time.

3.3 Each Quote to the Customer is based on all line items being purchased at the quoted quantity and price at time of ordering.

4. PRICES

4.1 All prices are subject to change without notice and all Orders are accepted by the Seller on the condition that they will be invoiced at the prices applying at the date of despatch of the Goods from the Seller's premises, or as per the Quote.

4.2. The Goods are sold on an Ex Works (32 Taylors road, Croydon, Vic, Australia) Incoterms 2010® and unless specified otherwise, prices do not include any transport costs unless otherwise quoted. Where the Customer requires freight to be prepaid, all expenses will be to the Customer's account at cost.

4.3 The Seller reserves the right at any time to make reasonable adjustments of prices in relation to fluctuations in the Seller's cost, including but not limited to CPI, labour, material, goods, transport, any applicable surcharges and in relation to any changes in currency exchange rates or duties which affect the Seller's costs for imported goods.

4.4 In the case of variations in rates of exchange the Seller reserves the right to increase its quoted price in relation to Goods supplied to the Customer by the same percentage calculated from the date of Quote by the Seller to the date of invoice, as disclosed by the variation in the Westpac Banking Corporation Spot Selling Rate in the relevant period. The Seller also reserves the right to increase its quoted price due to fuel surcharge variation in relation to Goods supplied to the Customer by the same percentage calculated from the date of the Quote by the Seller to the date of invoice.

4.5 All price lists and quotations are issued on an errors and omissions excepted basis. The Seller may correct any clerical errors or omissions, whether in computation or otherwise in any Quote, acknowledgment or invoice.

4.6 Unless otherwise stated, the price for the Goods is GST exclusive. The Seller will issue a Tax Invoice identifying the GST exclusive sale value of all items for which GST shall apply and be identified on the tax invoice. The Customer shall be liable for all government imposts of GST or any equivalent as separately itemised on the Seller's tax invoices subject to whether the Customer provides the Seller with its appropriate GST deferment certificate. 4.7 In the event that the Seller agrees to deliver goods in accordance with further directions of the Customer, the agreed price of the goods shall only apply if the quantity delivered is delivered in accordance with the Customer's directions as specified in its Order.

4.8 In addition to the price of the Goods the Seller may charge separately the Customer its packaging and handling charges that may vary from time to time.

5. TERMS OF PAYMENT

5.1 Subject to Clause 5.2, all invoices shall be paid in full not later than thirty (30) days from the date of invoice, unless the Seller otherwise agrees in writing. Time shall be of the essence in this regard.

5.2 The Seller shall be entitled to invoice for goods supplied to the Customer upon delivery thereof, subject to contrary agreement in writing provided that if delivery of any goods is delayed as a result of circumstances beyond the reasonable control to the Seller (including the circumstances set out in Clause 6.3 and 7) then the Seller shall be entitled to invoice the Customer for the goods at the expiration of a period of fourteen (14) days after notification by the Seller to the Customer that the goods are ready for delivery, in which event payment of fifty percent (50%) of the agreed price for the goods referred to in that notice shall fall immediately due and payable, the balance becoming payable on delivery or within three (3) months of the date of the notice, whichever is the earlier.

5.3 In the event that the Customer fails to make any payment to the Seller when payment falls due, the Seller shall have the right, without prejudice to any other right or remedy to which the Seller may be entitled to charge interest on the overdue amount at the rate of 3% per annum in excess of the interest rate prescribed by the Westpac Indicator Lending Rate for overdrafts above \$100,000.00, calculated from the date of invoice to the actual date of full and final payment. Any payment by the Customer shall be credited first against any interest so accrued and the balance of payment, if any, shall be applied in reduction of the outstanding balance of the price.

5.4 The extension of credit facilities and the terms upon which such credit is provided are, in all cases, at the sole discretion of the Seller and are subject to confirmation on the receipt of an Order. In any event the Seller retains the right to withdraw credit facilities at any time prior to delivery of goods.

6. DELIVERY OF GOODS

6.1 Whilst Seller will use its best endeavours to meet all quoted delivery or consignment dates the Seller shall in no event be liable to the Customer by reason of delays in delivery caused by any reason whatsoever.

6.2 The Seller shall use its own designated carrier for all deliveries or as quoted. If the Customer wishes to use its own carrier, delivery of the goods shall be ex-Seller's store and the Customer shall be liable for all freight and insurance costs ex-Seller's store and shall indemnify the Seller from and against all actions, suits, proceedings, claim for demands and all losses, expenses and liabilities, howsoever arising, from the transportation of the Seller's goods delivered ex-Seller's store once delivery has been made by the Seller to the Customers carrier.

6.3 In the event of any delay caused by the Customer or caused by industrial disputes, including strikes and lockouts, circumstances such as fire, war, mobilisation or any other cause beyond the reasonable control of the Seller, the Seller, at its option, may extend the quoted delivery or consignment dates or consign part of an Order or suspend consignment during that period of delay or may cancel the Order and the Customer shall not be relieved of its obligation to accept and pay for an Order, or any part of an Order, in accordance with Clause 5, as a result of any such extensions, partial consignments or suspensions.

7. STORAGE OF GOODS

In the event that after notification to the Customer that the goods are ready for delivery, delay in delivery is caused by the Customer or caused by industrial disputes, strikes and lockouts, circumstances such as fire, war, mobilisation or any other causes beyond the reasonable control of the Seller, the Seller shall be entitled, at its option, and without limiting the rights under Clause 5.2, to arrange suitable storage, whether at its premises or elsewhere, and shall take reasonable steps to protect the Customers interest in the goods. The Customer shall pay all cost of storage, demurrage, insurance, handling and other charges associated with such storage.

8. RISK

All goods sold to the Customer shall be at the Customer's risk immediately upon delivery, except where goods are held for the Customer in which case risk shall pass to the Customer on the date being seven (7) days from the date of notification to the Customer that the goods are ready for delivery.

9. TITLE OF GOODS

9.1 Notwithstanding the provisions of Clause 8, the Seller shall retain the title to all Goods supplied by it to the Customer until it has received payment in full of all sums due in connection with the supply of all Goods by the Seller to the Customer at any time. In the case of payment by cheque, bill of exchange or note, title shall not pass to the Customer until the same is honoured.

9.2 The Customer shall store all Goods and any composite goods owned by the Seller ("Seller's Goods") in such a way that they are clearly identifiable as the Seller's property, and shall maintain and allow the Seller to inspect records of the Seller's Goods, identifying them as the Seller's property and of the persons to whom it sells or otherwise supplies the Seller's Goods or any of them and of payments made by such persons for the Seller's Goods.

9.3 If payment for any Goods is overdue, the Seller is entitled, without prejudice to any of its other rights and remedies, to repossess the Seller's Goods and to enter into any premises upon which the Seller's Goods are stored, without notice for this purpose.

9.4 Until such time as the Seller receives payment in full for any Goods, if the Customer sells or receives any payment from a customer or insurer in respect of the Seller's Goods the proceeds of any such sale or disposition and an insurance proceeds (or claim thereto) shall be held by the Customer on trust for the Seller and paid into a separate bank account which shall not be overdrawn or otherwise dealt with without the Seller's prior written consent.

9.5 Nothing in Clauses 9.1 to 9.5 inclusive shall affect the Seller's rights as an unpaid Seller.

10. RETURN OF GOODS.

10.1 The Customer may within ten (10) days of receipt of any Goods claim the right to reject any goods which are wrongly or oversupplied, or which are not in accordance with any express or implied representations, warranties, terms or conditions of the contract of sale, without limiting the Seller's right to dispute any such claim. If the Customer fails to notify the Seller in writing of its claim for rejection and reasons therefore within such period, the Customer will, subject always to Clause 14 of these Terms of Sale, be deemed to have accepted such consignment.

10.2 Return of any of the Goods cannot be made by the Customer

- (a) without prior written authorisation from the Seller, and
- (b) unless accompanied by the delivery docket stating original invoice number, date of purchase and return reason.

10.3 In the event that the Customer returns Goods other than in accordance with Clause 10.2 and subject to Clause 14 the Seller, at its option, may re-consign those goods to the Customer, freight collect.

10.4 All Goods must be in good order and condition, unused and in original packing.

10.5 Where Goods which have been supplied by the Seller on a manufactured/ assembled to order or indent only basis, the Seller will not, unless agreed otherwise in writing, accept them for return except where such Goods are faulty or have been wrongly delivered against the Seller's drawings and/or the Seller's specification sheets provided to the Customer prior to manufacture.

10.6 Subject to clause 15, any faulty Goods will be repaired or replaced, or credited at the Seller's absolute discretion.

10.7 The Seller may from time to time, develop policies in connection with the return of Goods, which will be notified to the Purchaser and must be complied with before any returned Goods are accepted by the Seller in exchange for credit, or such returned Goods are otherwise repaired or replaced.

10.8 Nothing in this clause 10 purports to modify or exclude any conditions, warranties, guarantees and undertakings under the Australian Consumer Law and the Australian Consumer Law will operate and prevail to the extent of any inconsistency.

11. CANCELLATION OR VARIATION OF ORDERS

11.1 The Customer shall not cancel any Order without the prior written consent of the Seller which consent may or may not be granted in the Seller's sole discretion. No cancellation will be accepted on indented or custom built product held in the Sellers store at the request of the Customer.

11.2 Purchaser-requested order changes, including those affecting the identity, scope and delivery of the Goods, must be documented in writing, are subject to the Seller's prior written agreement and may be subject to adjustments in price, scheduling and other affected terms and conditions. The Seller reserves the right to reject any Customer requested change, especially where the change is deemed unsafe, technically inadvisable or inconsistent with established engineering or quality guidelines and standards, or incompatible with the Seller, its supply line partner's or supplier's design or manufacturing capabilities. The Seller further reserves the right to substitute using the latest superseding revision or series or equivalent Goods having comparable form, fit and function.

11.3 If the Customer cancels an order by written notice prior to shipment for stock line items and the cancellation is accepted by the Seller, the Seller may charge the Customer reasonable cancellation and restocking fees, including reimbursement for the Seller's direct costs incurred in connection with the cancellation.

11.4 Despite anything to the contrary in these Terms of Sale, the Seller may charge cancellation fees associated with Goods ordered on a manufactured/ assembled to order or indent only basis up to the actual selling price of the Goods.

11.5 At the Seller's option, any Order may be terminated by the Seller in the event of the insolvency of the Customer or in the event of execution being levied against any of the property of the Customer or in the event of the Customer being placed in liquidation, whether voluntary or otherwise, or a receiver and manager being appointed in respect of the assets or undertaking of the Customer or the Customer entering into a deed of

composition or arrangement with its creditors or any of them, or in the event that for any reason, in the Seller's reasonable opinion, the Customer is unlikely to be able to make payment for goods on the due date.

11.6 Re-schedules. No request for shipment release, in whole or in part, may be deferred less than 45 days before the scheduled shipment date. And any item maybe deferred only once, up to a maximum 60 days from the original requested shipping date.

11.7 If the deferred goods are in transit or held in Seller's inventory, the goods are subject to monthly price increases for the duration of the deferment. The increase will be calculated at 3% per annum in excess of the interest rate prescribed by the Westpac Indicator Lending Rate for overdrafts above \$100,000.00.

11.8 The Seller has the right to cancel an order for cause at any time by written notice to the Customer and the Seller will be entitled to cancellation and restocking charges as identified in this Clause 11. No cancellation by the Customer for cause will be effective unless and until the Seller has failed to correct such alleged cause within forty-five (45) days after receipt of the Customer's written notice specifying such cause.

12. SPECIFICATION AND INFORMATION

Where the Seller is not the manufacturer, the Seller relies on the specification supplied by the original manufacturer or by the Seller's supplier. The Seller offers and sells the Goods against specification and/or sample only and does not warrant or imply any Goods as being suitable for any one specific application.

13. INTELLECTUAL PROPERTY

The Customer acknowledges that all rights in respect of patents, copyrights, design rights, trade marks or other industrial or intellectual property rights connected with the Goods shall not pass to the Customer. The Customer shall indemnify the Seller against any and all liabilities, claims and costs incurred by or made against the Seller as a direct or indirect result of carrying out of any work required to be done on or to the Goods in accordance with the requirements or specifications of the Customer involving any infringement or alleged infringement of any rights of any third party.

14. PPSA

14.1 The Customer acknowledges that these Terms of Sale create a Security Interest in the Secured Property and the proceeds of sale of the Secured Property for the purposes of the PPSA.

14.2 The Customer consents to the Seller effecting a registration on the PPSR (as the Seller deems appropriate) in relation to the Security Interest arising under or in connection with these Terms of Sale and the Customer agrees to provide all assistance required by the Seller to facilitate this.

14.3 The Customer acknowledges and agrees that in relation to the part of the Secured Property that is inventory, the Customer will not allow any Security Interest to arise in respect of that Secured Property unless the Seller has perfected the Security Interest in the Secured Property prior to the Customer's possession of the Secured Property.

14.4 If Chapter 4 of the PPSA applies to the enforcement of the Security Interest arising under or in connection with these Terms of Sale, the Customer agrees:

- (a) to the extent that s115(1) of the PPSA allows this, the following provisions of the PPSA will not apply to the enforcement of that Security Interest: s95 to the extent that it requires the Seller to give a notice to the Customer, s96, s121(4), s125 (obligation to dispose of or retain collateral), s130 to the extent that it requires the Secured Party to give notice to the Customer, ss132(3)(d), ss132(4), s142 and s143 (reinstatement of security agreement); and
- (b) to the extent that s115(7) of the PPSA allows this, the following provisions of the PPSA will not apply to the enforcement of that Security Interest: s127, s129(2) and (3), s132, s134(2), s135, s136(3), (4) and (5) and s137.

14.5 If the Customer makes payments to the Seller at any time whether in connection with these Terms of Sale or otherwise, the Seller may in its absolute discretion apply that payment in any manner it sees fit.

14.6 The Customer agrees to immediately notify the Seller of any changes to its name or address.

14.7 The Customer agrees to do anything that the Seller requests the Customer to do (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed):

- (a) to provide more effective security over the Secured Property;
- (b) to register in respect of a Security Interest constituted by these Terms of Sale at any time;
- (c) to enable the Seller to exercise its rights in connection with the Secured Property;
- (d) to show the Seller whether the Customer has complied with these Terms of Sale.

14.8 The Customer will pay on demand any losses arising from, and any costs and expenses incurred in connection with, any action taken by the Seller under or in relation to the PPSA, including any registration, or any response to an amendment, demand or a request under s275 of the PPSA.

14.9 Any notices or documents which are required or permitted to be given to the Seller for the purposes of the PPSA must be given in accordance with the PPSA.

14.10 The Customer waives the right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

15. WARRANTY AND EXCLUSION OF LIABILITY - LIMITED LIABILITY

15.1 The Competition and Consumer Act 2010 (Cth) and the Australian Consumer Law may guarantee certain conditions, warranties and undertakings in relation to the Goods (the 'Consumer Guarantee'). To the extent they apply, these guarantees cannot be modified nor excluded by contract, and these Terms of Sale does not purport to modify or exclude any conditions, warranties, guarantees and undertakings under the Australian Consumer Law.

15.2 Except as expressly set out in these Terms of Sale and the Australian Consumer Law, the Seller makes no warranty, representation or other statement in respect of the Goods, their quality or their fitness for any purpose, except as stated expressly in these Terms of Sale, or as may otherwise be required by law.

15.3 If the Customer purchases Goods as a Consumer as defined in the Australian Consumer Law, then the Australian Consumer Law contains certain guarantees in relation to the Goods that cannot be excluded. In these circumstances, the Customer may be entitled to an identical replacement (or one of similar value if reasonably available), a refund or compensation for drop in value to the Goods, at the Customer's option. In the case of a minor failure, the Customer may have the Goods repaired, replaced or obtain a refund at the Seller's option.

15.4 If and only if the Customer is not a Consumer as defined in the Australian Consumer Law, the Seller warrants that the Goods, whether manufactured by the Seller, its supply line

partners or its suppliers, as published in the Seller's current catalogues and supplied by the Seller, shall, for a period of twelve months from the date of despatch of the Goods from the Seller's premises, be free of faulty workmanship, materials or design.

15.5 The warranties provided in Clause 15.4 shall be effective, and impose liability on the Seller to give effect to such warranty, only if:

- (a) The Seller is provided with written notice of the circumstances giving rise to the claim arising within thirty (30) days of the occurrence of such circumstances; and
- (b) The Customer is permitted to inspect Goods before they are repaired or replaced; and
- (c) the Customer returns the Goods or components to the Seller's premises, at the Customer's expense; and
- (d) The Seller is satisfied, by its own examination of the Goods, that any alleged circumstances giving rise to the claim have not been caused by:

(i) improper use, installation, operation, damage due to accident, neglect, lightning power surge, or from improper repair, alteration, modification or adjustment to the Goods; or

(ii) unusual deterioration or degradation due to physical, electrical, electromagnetic or noise environments.

15.6 To the extent permitted by law, the Seller's liability for any loss, injury or damage, shall be limited to making good, by replacement or repair, at the Seller's option, and at the Customer's expense in relation to costs over and above the direct costs of replacing or repairing the Goods or the component parts of the Goods at the Seller's premises, any defects which appear under proper use.

15.7 If and only if the Customer is not a "Consumer" as defined in the Australian Consumer Law, the Seller warrants that any repairs that the Seller undertakes to the Goods, shall, for a period of twelve months from the date of completion of the repair, be free of faulty workmanship, materials or design for a further period of twelve months, but only in respect of the components that are the subject of the repair.

15.8 Any repairs, alterations or other work carried out to the Goods by a person other than an authorised representative of the Seller shall invalidate the warranty in Clause 15.7.

15.9 If the Customer requests or insists that warranty service in Clause 15.7 be carried out on site or at the Customer's premises then any costs over and above the direct costs of replacing or repairing the Goods or the component parts of the Goods at the Seller's premises shall be at the Customer's expense.

15.10 The Seller makes no representation and provides no warranty in respect of any standard or custom software and firmware, supplied in connection with the Goods, (including that any such software shall be uninterrupted or free of errors, or that the functions contained therein shall meet or satisfy the Purchaser's intended use or requirements), except as stated expressly in these Terms of Sale, or as may otherwise be required by law.

15.11 Any information supplied by the Seller regarding Restrictions on Hazardous Substances and/or ROHS compliance status has been supplied in good faith on the basis of information, statements, assumptions and representations made by third parties and accordingly the Seller does not warrant or represent that the information is accurate or complete.

16. GOODS RETURNED FOR REPAIR (NOT UNDER WARRANTY)

16.1 Where Goods are not under an express warranty or subject to any Consumer Guarantee and are returned for repair, the Seller may charge a fee for inspection and preparation of a repair quotation and this fee shall be payable in the event that the Customer does not proceed with the repair. Goods sent to Dewar for repair must be freight pre-paid. 16.2 Any repairs that the Seller undertakes under this Clause 16 are guaranteed for a period of ninety (90) days from date of completion and only in respect of any replacement components that were used in the repair.

16.3 Despite anything to the contrary in this Clause 16, the Seller is not under any obligation to repair any Goods which are not under warranty.

17. INFRINGEMENT OF INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS

17.1 All Intellectual Property Rights, including but not limited to copyright, patents, design rights, trademarks, software and licences in, or related to, Goods supplied by the Seller remain the property of the Seller and shall not be available in any form to third parties, nor re-used by the Customer, unless agreed to in writing by the Seller.

17.2 Any software supplied by the Seller may be used by the Customer only in respect of the Goods specified.

17.3 Use of Goods which contain, or are to be used with, standard or custom software or firmware may be subject to the Customer's acceptance of additional terms and conditions in separate Seller or third-party licence agreements (Third Party Licence Agreements). Where there is a conflict between any term of a Third Party Licence Agreement and these Terms of Sale, the Third Party Licence Agreement will prevail to the extent of the inconsistency. In the absence of a Third Party Licence Agreement, the Purchaser is granted a non-exclusive, non-transferable and royalty free licence to use the purchased software or firmware only in object code form and solely in conjunction with the Goods, with no rights to sublicense, disclose, disassemble, decompile, reverse engineer, or otherwise modify the software or firmware.

17.4 The Purchaser must not alter, remove, or in any way tamper with, or otherwise do anything adverse to, any Intellectual Property Rights (including but not limited to trade marks), whether registered or unregistered, or numbers of the Seller or its suppliers attached to or placed on the Goods.

17.5 Unless otherwise declared in writing at time of sale, the Goods sold by must be resold in the original packages by the Customer.

17.6 The Purchaser acknowledges that there is no transfer of title, interest or ownership to any Intellectual Property Rights in the Intellectual Property Rights of the Seller and its related companies.

17.7 Where Goods sold are sold under a trade mark (whether registered or unregistered), the Customer should note that the Seller (and its related companies) will strictly enforce any rights (including the right to damages) in respect of any infringement of the Seller's Intellectual Property Rights arising in any manner whatsoever (including substitution, passing off or other improper use). The Customer must not itself use any logo, business name or intellectual property of the Seller.

17.8 If any action, suit proceeding, claim or demand is brought or made alleging that the sale, use or any other dealing with the Goods infringes the Intellectual Property Rights or industrial rights of third parties, the Customer shall forthwith notify the Seller thereof and give every assistance to the Seller in connection therewith as the Seller may reasonably require and shall not itself handle, deal with or compromise any such action suit

proceedings, claim or demand except with the prior written consent of the Seller.

18. CONFIDENTIAL INFORMATION

18.1 The Customer must:

- (a) keep the Confidential Information private and secret;
- (b) not access, use or reproduce Confidential Information for any purpose other than in connection with the Goods supplied to the Customer by the Seller nor assist or permit any other person to do so;
- (c) not disclose Confidential Information except as permitted under these Terms of Sale; and
- (d) take all steps reasonably necessary to safeguard the Confidential Information from unauthorised access, use or disclosure.

18.2 The Customer may disclose Confidential Information only with the prior written consent of the Seller.

18.3 All descriptive specifications, illustrations, drawings, data, dimensions and weights furnished by the Seller or otherwise contained in Seller's publications including price lists, brochures, catalogues, electronic media and other advertising material of the Seller are approximate only and are intended to be by way of general description of the Goods and shall not form part of the Terms of Sale between the Seller and the Customer unless otherwise specified by the Seller in writing, in which case, they shall be subject to recognised tolerances and rejection limits. The Seller does not agree to comply with any specifications and drawings referred to in any order unless such specifications and drawings have been produced to the Seller prior to the delivery of Goods and have been agreed to in writing and signed by a duly authorised representative of the Seller.

18.4 Following agreement to purchase, if the Customer requests the Seller to provide certified drawings, the Seller may, at its discretion, provide such certified drawings at the Seller's reasonable expense.

18.5 Any drawings, studies or other documents submitted by the Seller to the Customer remain the property of the Seller and constitute the confidential information, Intellectual Property Rights and copyright of the Seller. The Customer must not use them for any purpose other than in accordance with these Terms of Sale and must not transmit, disclose or make them available to any third parties without the prior written consent of the Seller.

19. DISPUTES

The parties will use their best endeavours and attempt in good faith to promptly resolve any dispute arising in connection with these Terms of Sale. Negotiations shall be conducted in English between representatives of the parties who have authority to settle the dispute. Negotiation must be conducted within 30 days of a party providing written notice to the other party of the matter and circumstances giving rise to the dispute ('Notice of Dispute'). If the dispute has not been resolved within 30 days of a party giving a Notice of Dispute, the parties will further attempt in good faith to settle the dispute by non-binding third-party mediation, with mediator fees and expenses apportioned equally to each side. If a mediator cannot be agreed upon within 10 days of a party giving a Notice of Dispute, either party may request the President of the Law Institute of Victoria to appoint a mediator. Mediation must take place within 90 days of the date of the Notice of Dispute. Any dispute not so resolved by negotiation or mediation may then be submitted to a court of competent jurisdiction in Victoria Australia in accordance with the Terms of Sale. These procedures are the exclusive procedures for the resolution of all such disputes between the parties under these Terms of Sale.

20. RECOVERY OF COSTS

The Customer will pay to the Seller any costs and expenses incurred by it or its solicitors, legal advisers, mercantile agents and other parties acting on the Seller behalf in respect of anything instituted or being considered against the Customer whether for debt, possession of any Goods or otherwise.

21. FORCE MAJEURE

The Seller will not be liable for any loss, damage or delay arising out of its failure (or that of its suppliers and subcontractors) to perform obligations under the Terms of Sale due to causes beyond its reasonable control, including without limitation, acts of God, acts or omissions of the Customer or its agents, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine restrictions, war, riots, acts of terrorism, delays in transportation, or transportation embargoes ('Force Majeure Events'). In the event of such delay, the Seller's performance date(s) will be extended for such length of time as may be reasonably necessary to compensate for the Force Majeure Event.

22. GOVERNING LAW

These Terms of Sale shall be governed by and construed in accordance with the laws of the State of Victoria Australia and the parties unconditionally and inevitably submit to the non-exclusive jurisdiction of the courts of that State.