

TERMS AND CONDITIONS OF SALE

1 Dictionary

In these Terms and Conditions, these words have the following meaning:

Account Application means the form approved by the Company and completed by the Customer for an account with the Company for the provision of Goods and/or Services.

Agreement means each Offer which is accepted by the Company under clause 3.2.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent State or Territory legislation.

Business Day means any day except a Saturday, Sunday or public holiday in Victoria.

Company means Mosdorfer Graph Pty Ltd (ACN 169 585 246).

Confidential Information means all information and other content disclosed by the Disclosing Party to the Receiving Party and includes these Terms and the prices of the Goods or Services but excludes information that:

- (a) is public knowledge or becomes available to the Receiving Party from a source other than the Disclosing Party (otherwise than as a result of a breach of confidentiality); or
- (b) is rightfully known to, or in the possession or control of the Receiving Party and not subject to an obligation of confidentiality in accordance with the terms of an Agreement.

Consequential Loss means:

- (a) any form of indirect, special or consequential loss, including loss of property, interruption to business, loss of information and data, loss of reputation, loss of profits, loss of actual or anticipated savings, loss of bargain and loss of opportunity; and
- (b) any loss beyond the normal measure of damages.

Consumer has the meaning provided to it in section 3 of the Australian Consumer Law.

Consumer Guarantee means a guarantee provided under Division 1 of Part 3-2 of the Australian Consumer Law.

Customer means the entity or person named in the Account Application who requested that Goods and/or Services be supplied to it by the Company, or in the absence of an Account Application, the entity or person who submitted an Order to the Company requesting Goods and/or Services be supplied to it by the Company

Delivery Fee means:

- (a) the delivery fee set out in a Quote or agreed in writing between the parties; or
- (a) if no delivery fee is set out in a Quote or agreed in writing between the parties, the costs of the Company incurred in delivering the Goods to the Customer.

Disclosing Party means a party who discloses its Confidential Information to the Receiving Party.

Force Majeure Event means any event arising from, or attributable to, acts, events, omissions or accidents which are beyond the reasonable control of a party (including labour conflicts, failure or delay by suppliers, fire, war, strike, pandemics, government directions and environmental disasters).

Goods means the goods to be supplied by the Company to the Customer under an Agreement.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as amended, varied or replaced from time to time.

Insolvency Event means, in relation to a body corporate, a liquidation or winding up or the appointment of a voluntary administrator, receiver, manager or similar insolvency administrator to that body corporate or any substantial part of its assets; in relation to an individual or partnership, the act of bankruptcy, or entering into a scheme or arrangement with creditors; in relation to a trust, the making of an application or order in any court for accounts to be taken in respect of the trust or for any property of the trust to be brought into court or administered by the court under its control; or the occurrence of any event that has substantially the same effect to any of the preceding events.

Invoice means any invoice issued by the Company to the Customer in respect of Goods or Services supplied under an Agreement.

Loss means any loss, liability, cost, expense, damage, charge, penalty, outgoing or payment however arising, whether present, unascertained, immediate, future or contingent and includes direct loss and Consequential Loss.

Offer has the meaning provided to it in clause 3.1.

Order means any order or other request by or for the Customer to the Company for it to supply to the Customer any Goods and/or provide it with any Services, whether written, verbal or implied in the circumstances and which may have been given in response to a Quote.

PDH Goods or Services means goods or services which, for the purposes of the Australian Consumer Law, are of a kind ordinarily acquired for personal, domestic or household use or consumption.

Purchase Price has the meaning provided to it in clause 4.1, as may be varied under clause 4.2.

Quotation or **Quote** means a quote or proposal, if any, provided by the Company to the Customer specifically in respect of the Goods and/or Services.

Receiving Party means a party who receives Confidential Information from or on behalf of the Disclosing Party.

Services means the services to be supplied by the Company to the Customer under an Agreement.

Software means a software program which is incorporated into or forms part of a Good.

Specifications means any physical, qualitative, technical or descriptive specifications, drawings or data of the Goods or Services which are supplied, or otherwise made available, by the Company.

Terms means these Terms and Conditions.

2 Application

These Terms apply to and govern the supply by the Company of Goods and provision of Services to the Customer which are to be provided under an Offer accepted by the Company.

3 Formation of Agreement

- 3.1 The Customer acknowledges and agrees that by submitting an Order the Customer makes an offer to the Company for the Company to supply it with the Goods and/or provide it with the Services on the following terms, in this order of precedence (a) the Quote (if any); (b) these Terms; and (c) the Order (**Offer**).
- 3.2 A contract will be formed between the Company and the Customer in respect of each Offer upon the earlier of:
 - (a) the Company notifying the Customer in writing that it accepts the Customer's Offer;
 - (b) the Company accepting, in full or part, payment from the Customer for any Goods or Services the subject of the Offer;
 - (c) the Customer accepting delivery of the Goods or performance of the Services the subject of the Offer to the Customer; or
 - (d) the Company otherwise confirming its acceptance of the Offer.
- 3.3 An Agreement formed under clause 3.2 will comprise these Terms, any Account Application, the Order (only to the extent that any additional terms in the Order are accepted by the Company in writing) and the Quote (if any).
- 3.4 The Company is not bound to accept any Offer and may decide not to accept any Offer for any reason and in the sole discretion of the Company.
- 3.5 Any price list, goods lists or other similar documents or catalogues or documents containing information in relation to the Goods or Services (**Documents**) issued by or on behalf of the Company do not constitute an offer by the Company to supply Goods appearing in those Documents or an offer by the Company to supply Goods at the prices set out in those Documents and for the avoidance of doubt those Documents do not form part of an Agreement except to the extent that they are expressly referred to in any Offer. The Company's Documents may be changed by the Company at any time without notice.
- 3.6 Printing, computational, writing and calculation errors in any Offer are not binding upon the Company.

4 Price and payment

- 4.1 Unless otherwise agreed by the parties, the price the Customer must pay for the Goods and/or Services under each Agreement will be:
 - (a) the price for the Goods and/or Services specified in the Quote or, if there is no Quote, in the Order; and
 - (b) the Delivery Fee,
(**Purchase Price**).
- 4.2 The Company may amend the Purchase Price and/or the Delivery Fee by notice in writing to the Customer by the amount of any increase or decrease in:
 - (a) the price charged by any supplier for the Goods or components of the Goods which is imposed on the Company after the date the Offer for the Goods was accepted;
 - (b) the price of materials used to manufacture or deliver the Goods which is imposed on the Company after the date the Offer for the Goods was accepted; or
 - (c) the cost of energy, the cost of transport or the amount of Taxes after the date the Offer for the Goods was accepted,
but only to the extent that the increase results in an increase in the cost incurred by the Company acquiring, manufacturing, providing or delivering the Goods. Where the Company amends the Purchase

- Price or Delivery Fee under this clause 4.2 it will give the Customer as much notice as reasonably possible of the change in the Purchase Price or Delivery Fee and the circumstances and reasons for the change in the Purchase Price and/or Delivery Fee.
- 4.3 Subject to clause 15, unless otherwise expressly specified by the Company or in these Terms, all prices stated are stated exclusive of any tax, levy, charge, impost, fee, deduction, compulsory loan or withholding and any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of any such amounts (**Taxes**) and the Customer is solely responsible for the payment of all Taxes levied or payable in respect of the Goods and/or Services. Nothing in this clause 4.3 requires the Customer to pay Taxes that are assessed or payable in respect of the income of the Company.
- 4.4 Unless otherwise agreed in writing between the Customer and the Company the due date for payment by the Customer to the Company of the Purchase Price for the Goods and/or Services supplied pursuant to an Agreement (**Due Date**) is:
- the due date agreed by the Company when accepting the Account Application but only if the value of the Invoice, combined with any outstanding amounts owed by the Customer to the Company, does not exceed any approved trading limit; or
 - if the conditions set out in paragraph (a) are not satisfied, prior to the scheduled date of delivery for the Goods or provision of the Services.
- 4.5 If the Customer fails to make any payment by the Due Date, and the Customer has not remedied the failure to make payment within 28 days of receiving notice of the failure to make payment or is the subject of an Insolvency Event, then, without prejudice to any other right or remedy available to the Company (including any termination rights under clause 17.1), the Company may, in its sole discretion, elect to do any one or more of the following:
- suspend any further deliveries to the Customer arising from any Agreement;
 - enter the property of the Customer in order to repossess the Goods and the Customer grants the Company and its agents an irrevocable licence to do so;
 - dismantle any other goods into which the Goods have been installed or incorporated and remove the Goods from such goods;
 - charge the Customer interest (both before and after any judgement) on the unpaid amount at the interest rate which is fixed from time to time under section 2 of the *Penalty Interest Rate Act 1983* (Vic), which interest will accrue and be chargeable from the first day on which such amount becomes overdue until the Company receives payment of all such amounts (including all interest) by way of cleared funds;
 - cancel or reverse any discounts, markdowns or rebates provided, or otherwise offered, to the Customer under any Agreement or other arrangement; and
 - exercise any rights which the Company may have under law, including the *Personal Property Securities Act 2009* (Cth).
- 4.6 If the Customer fails to make any payment by the Due Date the Customer must pay to the Company on demand all amounts reasonably incurred by the Company in recovering or seeking to recover the payment the Customer owes to the Company (including any administration costs and fees or commission paid to a debt collector, mercantile agent or similar).
- 4.7 A party (**First Party**) may not set off or combine any amount owing by the other party (**Second Party**) to the First Party, whether or not due for payment, against any money due for payment by the First Party to the Second Party under an Agreement and the First Party must pay, and not withhold, any amount due to the Second Party under an Agreement notwithstanding that the First Party may be in dispute with the Second Party regarding the Goods or Services supplied under an Agreement.
- ## 5 Delivery of Goods and provision of Services
- 5.1 The Company will deliver the Goods to the Customer in the manner:
- reasonably determined by the Company; or
 - as otherwise agreed between the Company and the Customer (including collection by the Customer).
- 5.2 The Goods will be delivered to the address specified in the Offer or as otherwise agreed between the Company and the Customer and if no address is specified or agreed then the Goods are to be collected by the Customer from the Company.
- 5.3 The Company will use its best endeavours to deliver Goods and provide the Services between the hours of 8.00am and 5.00pm Monday to Friday (excluding public holidays) at the place of delivery or service provision.
- 5.4 Unless otherwise agreed by the Company, the Customer will be responsible, at its own cost, for the unloading of any Goods at the delivery location and there must be a representative of the Customer present at the delivery location at the time delivery is made of the Goods and, if no such representative is present, a redelivery fee may be charged by the Company.
- 5.5 Without limiting any other obligation of the Customer under an Agreement, the Customer must take all steps and fulfill all requirements reasonably necessary to accept delivery of the Goods from the Company.
- 5.6 In the event the Company is unable to deliver the Goods to the Customer because of an act or omission of the Customer, the Company will be entitled to, at the risk and cost of the Customer (including costs of storage) and without limiting any other rights the Company may have, store any Goods which the Customer does not take delivery of or does not collect.
- 5.7 The Company will use its reasonable endeavours to deliver the Goods and provide the Services on any date specified or estimated by the Company or set out in a Quote or Order however such dates are estimates only.
- 5.8 Where the Company will not be able to deliver the Goods or provide the Services by any date specified or estimate by the Company, the Company will use its reasonable endeavours to notify the Customer in writing of this and the reasons for this and, where possible, state the expected new date of delivery or service provision.
- 5.9 The Customer acknowledges and agrees that the Company may, but will not be required to, provide proof of delivery or other similar documentation (whether at the time of delivery or after).
- 5.10 Without limiting and subject to clauses 10.1 and 10.2, if the quantity of Goods which are delivered to the Customer is slightly lower than was required under the Agreement, the Customer's only remedy is a refund of the Purchase Price for the Goods not delivered. The amount of delivery will be deemed slightly lower if:
- for Offers of up to 5,000 Goods, up to 2.5% of the Goods are not delivered;
 - for Offers between 5,001 and 10,000 Goods, up to 2% of the Goods are not delivered; and
 - for Offers of more than 10,000 Goods, up to 1% of the Goods are not delivered.
- ## 6 Defective Goods
- 6.1 The terms of this clause 6 are subject to clause 10 and, if a Good is not of acceptable quality, faulty, defective or damaged, the Customer may have rights under the Australian Consumer Law which are not affected by this clause 6.
- 6.2 Without limiting any rights which the Customer may have under the Australian Consumer Law, the Customer must:
- prior to taking possession of the Goods, inspect the Goods and immediately (but no later than 14 days after delivery) notify the Company in writing if the Goods are not fit for any purpose for which the Customer intends to use the Goods, have any defect or otherwise do not meet any Specifications; and
 - if it becomes aware of any latent defect with a Good, immediately (but no later than 14 days after becoming aware) notify the Company in writing of the latent defect.
- 6.3 Subject always to any applicable provisions of the Australian Consumer Law, the Customer will not be entitled to make any claim in relation to the Goods being not fit for any purpose, being defective or not meeting the Specifications if it does not notify the Company of the claim within the times specified in clause 6.2.
- 6.4 The Customer must allow the Company to inspect the Goods within 14 days of any notification made by the Customer under clause 6.2.
- 6.5 The provision to the Customer of any refund or other remedy (such as improvement, repair or replacement) in respect of any Goods the subject of a notice provided under clause 6.2 which are defective, damaged or do not meet the Specifications will be at the Company's sole discretion and the Company may require that the Customer reimburse the Company for any disassembly, assembly, transport, packaging, travelling and sojourn costs and expenses incurred by the Company.
- 6.6 If the Customer provides a notice under clause 6.2 and the Goods are not defective or damaged and meet the Specifications then the Customer must pay to the Company on demand all costs incurred by the Company in dealing with that notice and the claim that the Goods are defective, damaged or do not meet the Specifications.
- ## 7 Title and risk of Goods
- 7.1 Title to, and property in any Goods supplied under an Agreement remain with the Company and will only pass to the Customer once all moneys owing by the Customer to the Company in respect of the Goods have been paid in full.

- 7.2 Risk in the Goods passes to the Customer upon the Goods being removed from the Company's premises (or that of the Company's supplier) for delivery to the Customer from such premises and the Customer bears the risk of transport of the Goods and is responsible for arranging, and taking out in its own name and its own cost, any insurance in respect of the Goods from the time risk passes to the Customer.
- 7.3 As between the Company and the Customer the Customer is responsible for all Loss and damage to the Goods after risk in the Goods passes to the Customer in accordance with clause 7.2.
- 7.4 Until such time as full title, property and ownership of the Goods passes to the Customer in accordance with clause 7.1, and while the Goods remain in the Customer's full control and possession:
- (a) the Customer must hold the Goods as the Company's fiduciary agent and bailee and must not sell, lease, dispose of or otherwise deal with the Goods in any way without the Company's prior written consent;
 - (b) the Customer must insure the Goods for their full replacement value against all insurable risks;
 - (c) the Customer must store the relevant Goods separately from any other goods and in a way that enables the Goods to be clearly identified as the Company's and referable to a particular Invoice;
 - (d) the Company may at any time after payment is overdue require the Customer to deliver up the Goods to the Company and, if the Customer fails to deliver up the Goods immediately, the Company may enter the premises of the Customer or any third party where the Goods are stored and repossess them and the Customer expressly authorises and grants the Company and its agents an express, irrevocable licence to enter the premises of the Customer or relevant third party to remove or arrange for the removal of the Goods; and
 - (e) the Customer must not pledge or grant a security interest in or in any way charge by way of security for any indebtedness, any of the Goods which remain the property of the Company. If the Customer does pledge or in any way charge by way of security, for any indebtedness, any of the Goods for which property and ownership has not passed to the Customer, the Customer must remove the pledge, charge or security interest immediately and all moneys owing by the Customer to the Company will (without prejudice to any other right or remedy of the Company) immediately become due and payable to the Company; and
 - (f) the Customer must not remove, deface, alter, obliterate or cover up any names, marks, designs, numbers, code or writing on the Goods.
- 7.5 In the event that the Customer processes, incorporates, transforms or installs the Goods (or any portion of them) into any other goods manufactured or produced by the Customer or a third party, then the Customer must:
- (a) keep and maintain records in relation to the Goods which have been processed, incorporated, transformed or installed and the goods in which the Goods have been processed, incorporated, transformed or installed; and
 - (b) hold a proportion of any payment (**Relevant Proportion**) received by the Customer for such goods on trust for the Company and the Customer acknowledges that the Relevant Proportion must be not less than the dollar value of the portion of the Goods processed, incorporated, transformed or installed.
- 7.6 If an Insolvency Event occurs in respect of the Customer then, without the need for notice or demand by the Company, the Customer acknowledges that any sale or purported sale of the Goods will not be in the ordinary course of the Customer's business and the proceeds of any Goods sold in such circumstances will, to the extent of any money owing by the Customer to the Company, be held on trust for the Company by the administrator, controller or similar officer as the case may be, or if there is no such officer, by the Customer.
- 8 Use of Goods**
- The Customer must ensure that the Goods are:
- (a) assembled, installed, commissioned and operated in accordance with all laws and any standards, technical rules, manuals, policies or procedures provided in respect of the Goods;
 - (b) used and operated in a safe manner;
 - (c) only used for the purpose and capacity for which they have been specifically designed;
 - (d) used in a skilful and proper manner by competent and properly qualified and trained personnel; and
 - (e) not modified in any way.
- 9 PPSA**
- 9.1 Words and expressions used in this clause 9 which are not defined in these Terms but are defined in the *Personal Property Securities Act 2009* (Cth) (**PPSA**) have the meaning given to them in the PPSA.
- 9.2 Unless a Customer has paid for Goods in respect of an Agreement before they are delivered to the Customer, each Customer acknowledges that:
- (a) the Agreement for the supply of Goods created under these Terms is a security agreement for the purposes of the PPSA, under which the Customer grants the Company a security interest in the Goods, any amount owed to the Customer in respect of the Goods (**Account**) and any proceeds in connection with the sale of the Goods and the Account (**Proceeds**) to secure all monies owing by the Customer to the Company from time to time;
 - (b) where the Company has other enforcement rights in addition to the enforcement rights provided for in the PPSA, those other enforcement rights will continue to apply; and
 - (c) the Company is not obliged to act in any way to dispose of or to retain any Goods which have been seized by the Company or any person nominated by the Company under its rights under the PPSA.
- 9.3 Without limiting anything else in these Terms, the Customer consents to the Company effecting a registration on the register in relation to any security interest created by or arising in connection with, or contemplated by, these Terms, including in relation to the Goods, the Account and the Proceeds. The Customer agrees to promptly do all things necessary to ensure that any security interest created under these Terms is perfected and remains continuously perfected, the Company's priority position is preserved or secured and any defect in any security interest, including registration, is overcome.
- 9.4 The Customer must promptly take all reasonable steps which are prudent for its business under or in relation to the PPSA (including doing anything reasonably requested by the Company for that purpose in relation to the Goods, the Account or the Proceeds). Without limiting the foregoing, the Customer must:
- (a) create and implement appropriate policies and systems to register a security interest in relation to the Goods where the Customer on sells the Goods to a third party; and
 - (b) where appropriate, take reasonable steps to identify security interests in relation to the Goods in the Customer's favour and to perfect and protect them, with the highest priority reasonably available.
- 9.5 The Customer must on demand reimburse the Company for all expenses incurred in the enforcement of any rights arising out of any of the Company's security interests.
- 9.6 The Customer must not change its name, ACN, ABN, address or contact details without providing prior written notice to the Company and must not register a financing change statement or a change demand without the Company's prior written consent.
- 9.7 To the extent the law permits, the Customer waives its rights to receive a copy of any verification statement or financing change statement; to receive any notice required under the PPSA, including notice of a verification statement; and to reinstate the security agreement by payment of any amounts owing or by remedy of any default; and the Company need not comply with, and the Customer waives any rights under sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 127, 128, 129, 130, 132, 134(2), 135, 136(3), (4) and (5), 137, 142 and 143 of the PPSA.
- 9.8 The Customer may only disclose information or documents, including information of a kind referred to in section 275(1) of the PPSA, if the Company has given prior written consent.
- 10 Liability**
- 10.1 If the Customer is a Consumer and the Company supplies PDH Goods or Services to the Customer, the Company acknowledges that the Customer may have certain rights under the Australian Consumer Law in respect of the Consumer Guarantees as they apply to the PDH Goods or Services supplied by the Company and nothing in these Terms should be interpreted as attempting to exclude, restrict or modify the application of any such rights.
- 10.2 If the Customer is a Consumer and any goods or services supplied by the Company to the Customer are non PDH Goods or Services, the Company's liability to the Customer in connection with any breach of the Consumer Guarantees in respect of those non PDH Goods or Services is limited (at the Company's discretion) to:
- (a) in the case of Goods:

- (i) the replacement of the Goods or the supply of equivalent goods;
 - (ii) the repair of the Goods;
 - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the Goods repaired; and
- (b) in the case of Services:
- (i) the supplying the Services again; or
 - (ii) the payment of the cost of having the Services supplied again.
- 10.3 Subject to clause 5.10 and 10.7, if the Customer makes a claim against the Company in connection with or arising out of an Agreement which includes a cause of action other than for a breach of a Consumer Guarantee then, to the extent the claim, or part of the claim, does not relate to a Consumer Guarantee and to the extent permitted by law, the Company's total aggregate liability arising in connection with all such claims shall be limited to the amount equal to 100% of the amounts actually received by the Company from the Customer under that Agreement.
- 10.4 In relation to the supply of Goods which are non PDH Goods or Services, if the Company is liable to indemnify the Customer under section 274 of the Australian Consumer Law, the Company's liability to the Customer is limited to an amount equal to the lower of:
- (a) the cost of replacing the Goods;
 - (b) the cost of obtaining equivalent Goods; or
 - (c) the cost of having the Goods repaired.
- 10.5 Subject to clauses 10.6 and 10.7, the Customer's total aggregate liability arising in connection with all claims the Company makes against the Customer in connection with or arising out of an Agreement shall be limited to the amount equal to 100% of the amounts actually paid by the Customer to the Company under that Agreement.
- 10.6 Clause 10.5 does not apply in relation to any claim which the Company may make against the Customer in respect of the Customer's obligation to pay the Purchase Price (including any amount under clause 4.5(d) or 4.6).
- 10.7 Without limiting and subject to clauses 10.1 and 10.2, neither party shall be liable to the other party for any Consequential Loss.
- 10.8 The Customer acknowledges that it must use the Goods in accordance with any manuals, procedures or other information enclosed or provided with the Goods. If no manuals, procedures or other information is enclosed or provided with the Goods then the Customer may contact the Company to request any applicable manuals, procedures or information.
- 11 Intellectual Property**
- 11.1 Unless expressly stated by an Agreement, the parties acknowledge and agree that as between the Company and the Customer all intellectual property rights (including know how) in the Goods, Software, any documents and data provided by the Company to the Customer and any material created as part of the Services (including in designing or manufacturing the Goods) vests in and exclusively belongs to and are irrevocably assigned to the Company (**Company IP**).
- 11.2 The Company grants the Customer a non-exclusive, royalty free, non-transferable, non-sublicensable licence to use the intellectual property rights in the Company IP solely for the purpose of the Customer using the Goods. For the avoidance of doubt, the Customer must not provide any Company IP to any third party and such Company IP will be Confidential Information of the Company.
- 12 Notification of claims**
- The Customer shall notify the Company immediately if it becomes aware of:
- (a) any claim; or
 - (b) any death, serious injury or serious illness,
- in respect of, or caused by, the Goods or other goods of which the Goods are a component or mixed with and the Customer will:
- (c) provide the Company with all documents and information reasonably required by the Company in relation to the claim, death, serious injury or illness; and
 - (d) take all reasonable steps to mitigate any Loss arising as a consequence of the claim, death, serious injury or serious illness.
- 13 Specifications**
- 13.1 The Specifications are approximate only and the Customer acknowledges and agrees that there may be minor variations or differences between the Specifications and the Goods and Services delivered to the Customer.
- 13.2 If an Offer has been accepted by the Company, the Customer acknowledges that the Offer was accepted by the Company on the basis of, and in reliance upon, any information, drawings, models, specifications, data, representations, statements, approvals and documents provided by the Customer, set out in an Order or otherwise approved by the Customer (**Customer Specifications**).
- 13.3 Where any Customer Specifications are required to be provided by the Customer to the Company before the Company can proceed with or complete the provision of the Goods or Services such Customer Specifications must be supplied or provided by the Customer to the Company within a reasonable time so as to enable the Company to deliver the Goods or Services within any agreed time frame.
- 13.4 The Company will have no obligation to check the correctness, accuracy or suitability or any Customer Specifications.
- 13.5 The Customer indemnifies the Company in respect of any Loss suffered or incurred by the Company as a result of any claim made by a third party against the Company to the extent the third party claim arises out of, or in respect of, a defect, error, omission or other similar issue with any Customer Specifications.
- 13.6 If the Customer approves any sample or prototype of a Good produced by the Company or any tests conducted by the Company on any Goods, the Customer shall be deemed to have accepted the physical, qualitative, technical or descriptive specifications, dimensions, weights or other particulars of the Goods as produced or tested by the Company.
- 13.7 The Company may make changes to the specifications, dimensions, weights or other particulars of the Goods as may be required from time to time by:
- (a) law; or
 - (b) any safety or manufacturing requirements, provided any such change does not have any material impact on the ability of the Customer to use the Goods for their intended purpose.
- 14 Confidentiality**
- 14.1 The Receiving Party:
- (a) may use Confidential Information solely for the purposes of the relevant Agreement;
 - (b) must keep confidential all Confidential Information; and
 - (c) may disclose Confidential Information only to (i) employees and contractors who (A) are aware and agree that the Confidential Information must be kept confidential and (B) either have a need to know the Confidential Information (and only to the extent that each has a need to know), or have been specifically approved by the Disclosing Party; (ii) as required by law or securities exchange regulation; or (iii) with the prior written consent of the Disclosing Party.
- 14.2 The Receiving Party must notify the Disclosing Party immediately once it becomes aware of any breach of confidentiality in respect of the Confidential Information and must take all reasonable steps necessary to prevent further unauthorised use or disclosure of the Confidential Information.
- 15 GST**
- Unless otherwise expressly stated in writing in an Agreement, all amounts payable by the Customer in connection with an Agreement do not include an amount for GST. If GST is payable on any supply made by the Company under these Terms, the Customer must pay to the Company, in addition to and at the same time as the payment for the supply, an amount equal to the amount of GST on the supply. Where the Customer is required by these Terms to reimburse or indemnify the Company for any Loss or other amount incurred, the amount to be reimbursed or paid will be reduced by the amount of any input tax credit that the Company will be entitled to claim for the Loss or amount incurred and increased by the amount of any GST payable by the Company in respect of the reimbursement or payment. This clause does not merge on completion or termination of the relevant Agreement or contract. In this clause, words and expressions which are defined in the GST Act have the same meaning given to them by the GST Act.
- 16 Force Majeure**
- 16.1 Neither party will be liable for any failure to perform or delay in performing its obligations under an Agreement (other than in respect of the Customer's obligation to pay the Purchase Price and any amount under clause 4.5(d) or 4.6) if that failure or delay is due to a Force Majeure Event.
- 16.2 If a Force Majeure Event under clause 16.1 exceeds 20 Business Days, either party may immediately terminate the Agreement by written notice to the other party.
- 17 Termination**
- 17.1 Without limiting the Company's other rights under these Terms, the Company may terminate any and all Agreements and any account

facility under an Account Application with immediate effect by written notice to the Customer if:

- (a) the Customer fails to make any payment under the Agreement to the Company by the due date for that payment and the Customer has not remedied the failure to make payment within 28 days of receiving notice of the failure to make payment;
- (b) the Customer is the subject of an Insolvency Event;
- (c) the Customer has materially breached the relevant Agreement (including these Terms) and the breach is not capable of remedy;
- (d) the Customer has breached any term of the relevant Agreement (including these Terms) which is capable of remedy and has not remedied the breach within 28 days of receiving notice requiring the breach to be remedied; or
- (e) in accordance with clause 16.2.

17.2 Without limiting the Customer's other rights under these Terms, and to the extent permitted by law, the Customer may terminate any and all Agreements and any account facility under an Account Application with immediate effect by written notice to the Company if:

- (a) the Company is the subject of an Insolvency Event;
- (b) the Company has materially breached the relevant Agreement (including these Terms) and the breach is not capable of remedy;
- (c) the Company has breached a term of the relevant Agreement (including these Terms) which is capable of remedy and has not remedied the breach within a reasonable period of time of receiving notice requiring the breach to be remedied (being not less than 14 days of receiving the notice); or
- (d) in accordance with clause 16.2.

17.3 On termination of an Agreement:

- (a) all monies owed by the Customer to the Company (including the Purchase Price for any Goods in the possession of the Customer but not yet paid) shall become immediately due and payable;
- (b) the Customer must not sell or part with possession (other than as required under clause 17.3(c)) any Goods the subject of the Agreement (other than any Goods which have been paid for);
- (c) the Customer must, at its cost immediately upon demand from the Company return to the Company all Goods the subject of the Agreement (other than any Goods which have been paid for); and
- (d) the Company may enter the premises of the Customer or any third party to repossess any Goods not returned under clause 17.3(c) and the Customer expressly authorises and grants the Company and its agents an express, irrevocable licence to enter the premises of the Customer or relevant third party to remove or arrange for the removal of such Goods.

17.4 Each party retains any rights, entitlements or remedies it has accrued before termination, including the right to pursue all remedies available to either party at law or in equity.

18 Cancellation

The Company may cancel or suspend any Agreement effective immediately upon providing the Customer with written notice of cancellation or suspension where the Company is unable to supply the relevant Goods or provide the Services to the Customer because of reasons beyond the reasonable control of the Company, provided that if the Company cancels an Agreement under this clause 18 it will refund to the Customer any amounts already paid by the Customer for the Goods or Services subject to the cancellation and which are not provided to the Customer (including the amount of any Deposit).

19 Inconsistency

19.1 Unless otherwise specified in these Terms, in the event of an inconsistency between any of the documents listed in clause 3.3, the following order of precedence shall apply to the extent of the inconsistency (a) the prices and quantity of Goods and/or Services set out in a Quote (if any); (b) these Terms; (c) the Account Application; (d) any other terms of the Quote (if applicable); and (e) without limiting clause 19.2, any terms in the Order which are accepted by the Company in writing.

19.2 These Terms shall prevail over any Customer terms and conditions (including any conditions of sale), except to the extent specifically agreed by the Company in writing and any terms or conditions included in an Order or other document provided or issued by the Customer will only be binding on the Company if expressly agreed by the Company in writing and only in respect of that particular Order.

20 Miscellaneous

20.1 In these Terms:

- (a) a reference to a document or legislation includes a reference to that document or legislation as varied, amended, novated or replaced from time to time; and
- (b) no provision will be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Terms or the inclusion of the provision in the Terms.

20.2 The Customer must maintain and keep current and complete records of the Goods which the Company has supplied to the Customer (in sufficient detail so as to be readily identified as goods supplied by the Company) and must, immediately upon written request from the Company, provide the Company with access to, or copies of, those records.

20.3 Neither party may assign or novate any of its rights or obligations under these Terms without the other party's prior written consent (which will not be unreasonably withheld).

20.4 The Company may, to the extent permitted by law, vary these Terms from time to time with the variation becoming effective as soon as the Company provides the Customer notice of the variation (**Variation Date**). Any variation to these Terms will only apply to, and in respect of, any Offer made after the Variation Date and the parties acknowledge that nothing in these Terms requires the Customer to make any further Offers after the Variation Date. The Customer may, by written notice to the Company, terminate these Terms at anytime within 30 days of receiving notice of a variation of the Terms but any such termination by the Customer will not have the effect of terminating any Agreement existing prior to the notice of termination.

20.5 A failure to exercise or delay in exercising any right under these Terms does not constitute a waiver and any right may be exercised in the future. Waiver of any rights under these Terms must be in writing and is only effective to the extent set out in that written waiver.

20.6 If any provision of these Terms is void, unenforceable or illegal and would not be so if words were omitted, then those words are to be severed and if this cannot be done, the entire provision is to be severed from these Terms without affecting the validity or enforceability of the remaining provisions.

20.7 These Terms are governed by the laws in force in Victoria, and the Customer and the Company submit to the non-exclusive jurisdiction of the courts of Victoria.

20.8 The termination or expiry of these Terms or any Agreement does not operate to terminate any rights or obligations under an Agreement that by their nature are intended to survive termination or expiration, and those rights or obligations remain in full force and binding on the party concerned including without limitation the rights and obligations under clauses 1, 6, 7, 8, 9, 10, 11, 12, 14, 15, 17, 19 and 20.

20.9 Notices by a party must be delivered by hand, prepaid post or email and sent to the address of the receiving party specified in the Account Application or, if none are specified, in any other part of the Agreement. Notices shall be deemed to have been received by hand upon delivery, by post within two (2) Business Days of sending and by email one hour after the email (unless the sender knows that email has failed to send).