

Terms and Conditions of Sale

of David Brown Santasalo Australia



David Brown Santasalo

1. Interpretation

- 1.1 In these terms and conditions of sale (“**these Conditions**”):
- (a) “**the Company**” means David Brown Santasalo Australia Pty Limited (ACN: 000 008 640) or any subsidiary or associated company which accepts the Customer’s order, and its/their respective successors and assigns.
 - (b) “**the Customer**” means the person, firm or company to whom the Goods and/or Services are to be supplied.
 - (c) “**the Contract**” has the meaning given to it in Clause 2.3.
 - (d) “**the Goods**” means the parts, materials and equipment supplied or to be supplied by the Company under the Contract (including those that may be described in the Company’s quotation or order acknowledgement, and those that might be supplied as an incidental or integral part of the Services).
 - (e) “**the Equipment**” means plant, machinery, tooling, parts, apparatus or equipment in respect of which Services are to be performed, other than the Goods.
 - (f) “**Incoterms 2020**” means the 2019 publication of the International Chamber of Commerce rules relating to International Commercial Terms.
 - (g) “**PPSA**” means Personal Property Securities Act 2009 as modified or replaced from time to time.
 - (h) “**PPSR**” means the Personal Property Securities Register established under the PPSA.
 - (i) “**the Services**” means the services performed or to be performed under the Contract, as may be described in the Company’s quotation or order acknowledgement.
 - (j) The singular shall import the plural, and vice versa.
 - (k) “**supply**” means, as the context requires, sale, supply or performance of the relevant Goods or Services, and “supplied” shall be interpreted accordingly.
 - (l) “**including**” means “including, without limitation”.
 - (m) “**price**” means the price of the relevant Goods and/or Services, or portion thereof and refers to Australian Dollars.

2. Basis of Contract

- 2.1 Quotations and tender submissions issued by the Company are invitations to treat, not offers capable of acceptance. Similarly, purchase orders and other documents or communications issued by the Customer purporting to place orders for goods and/or services shall also be deemed to be invitations to treat, not offers.
- 2.2 The Company’s order confirmation shall constitute an offer to supply the relevant goods or services to the Customer based on these Conditions. Such offer will be deemed to be accepted by the Customer upon the earlier of the following:
- (a) the Customer’s express unconditional acceptance of such offer in writing (including email);
 - (b) the Customer commencing performance of any of its obligations in relation to the order confirmation, including payment of any sum of money or furnishing any parts, materials, equipment or information;
 - (c) the expiration of 7 (seven) days from the date of issue of the order confirmation without any express rejection of same by the Customer; and
 - (d) the Customer taking delivery of any of the Goods or allowing commencement of performance of any services on its premises.
- 2.3 The resulting contract for the supply of goods and services (“**Contract**”) shall comprise the Company’s order acknowledgement, these Conditions and any other documents expressly incorporated by reference in the Company’s order confirmation (e.g. the Customer’s Credit Application). The Company’s order acknowledgement shall take precedence for the purpose of resolving any conflict or inconsistency between the documents comprising the Contract.

- 2.4 The Contract represents the entire agreement between the Company and Customer in relation to its subject matter. All other terms, conditions, warranties and representations, including any that may be included or referred to in the Customer’s purchase order and including any that may be implied by statute or common law, are hereby excluded to the fullest extent permitted by law. The Customer agrees that it places no reliance on any representations, statements or assurances made by the Company or any of its representatives prior to the Contract being made.
- 2.5 Once made, the Contract cannot be varied except in writing, signed by a duly authorised representative of the Company.

3. Tests, Inspection and Performance

- 3.1 If the Contract so provides, the Company will give reasonable notice to the Customer of the date on which and the time at which any inspections of or tests on the Goods, Equipment and/or Services are to be made so as to enable the Customer to attend if it so desires. Any inspections or tests which the Company may agree, at the request of the Customer, to make in addition to those which it normally undertakes will be paid for by the Customer and their cost will be added to the price of the Goods and/or Services.
- 3.2 It is the Customer’s responsibility to ensure that any site, other than the Company’s site, at which Goods are to be delivered or Services are to be performed is suitable, safe and readily accessible to the Company and its agents, and that all necessary and appropriate equipment and personnel are provided free of charge to the Company and its agents to facilitate performance of the Company’s obligations under the Contract.

4. Time for Performance

- 4.1 The time for delivery of the Goods and/or performance of the Services shall not be of the essence of the Contract. Unless the Company’s order acknowledgement states otherwise, any date or period quoted for delivery and/or performance is an estimate only and the Company will not be liable for any loss or damage, whether direct or indirect, and whether suffered by the Customer or by a third party, resulting from any delay in delivery of or failure to deliver the Goods or perform the Services, howsoever caused. Notwithstanding that, if the order acknowledgement states that the Customer will be entitled to liquidated damages for delay in delivery, then such liquidated damages shall accrue at the rate of 0.5% of the price for each week of delay, up to a maximum of 5% of the price, or at such other rates and/or subject to such other cap as may be stated on the order acknowledgment. This clause sets out the Company’s entire obligation and liability for delay, and all other remedies that the Customer may be entitled to for delay are hereby excluded to the fullest extent permitted by law.

5. Delivery of Goods and Equipment

- 5.1 This clause 5 determines the Company’s delivery obligations for Goods, other than Goods supplied as an incidental or integral part of the performance of Services, and for redelivery of Equipment back to the Customer. For the sake of brevity, references to “Goods” in this clause 5 also import references to Equipment.
- 5.2 Goods will be delivered or collected in accordance with the agreed trade terms stated on the Company’s order acknowledgement. If the order acknowledgement is silent as to those terms, Goods will be delivered on the basis of clauses 5.3 and 5.4 below.
- 5.3 If the agreed place of delivery is the Company’s own premises:
- (a) Delivery will be deemed to have been made when the Company notifies the Customer that the Goods are ready for collection unless the Customer can prove that they were not in fact ready at that time, in which case delivery will be deemed to have been made on the earliest date on which the Goods were in fact ready for collection.
 - (b) The Customer will be responsible for collecting the Goods from such premises on or after the deemed delivery date, with the Customer’s representatives being responsible for loading the Goods onto the relevant vehicle.

Document control

Version: 1.0
Publication date: 26 October 2021

Last updated by: Access Legal
Approved by: Neil Jordan, General Counsel

- (c) Risk in the goods will pass to the Customer upon the Goods being placed into the custody or control of the Customer's representatives.
- 5.4 If the agreed place of delivery is not at the Company's own premises, the Company will be responsible for delivering the Goods to the agreed place of delivery. Risk in the Goods will pass upon delivery.
- 5.5 The Company may deliver the Goods in instalments. Deliveries of further instalments may be withheld until the Goods earlier instalments have been paid for in full. Default by the Company, howsoever caused, in respect of one or more instalments will not entitle the Customer to terminate the relevant Contract as a whole, unless otherwise expressly provided in the Company's order acknowledgement.
- 5.6 The Customer will give the Company despatch instructions (including any Special marking of packing cases) and identify the packaging standard required at the time of placing its Order.

6. Storage and Disposal

- 6.1 The Goods or Equipment may be collected by agreement between the Customer and the Company. If such agreement is made:
- (a) The Company will store the Goods and/or Equipment for a period of fourteen (14) days only, after such time the Goods and/or Equipment will be despatched to the Customer;
- (b) The Customer will be charged an appropriate fee for storage. The Customer will be responsible for any Goods and/or Equipment stored by the Company, and any risk in relation to the stored Goods and/or Equipment passes to the Customer once stored.
- 6.2 If by reason of any default of the Customer, the Goods or Equipment are not despatched or collected from the Company's premises within 14 days from Delivery, the Company will be entitled in addition and without prejudice to any other rights and remedies which it may have against the Customer in respect of such default:
- (a) to store the Goods and/or Equipment at the sole risk and expense of the Customer making an appropriate charge to the Customer for storage; and/or
- (b) to give written notice to the Customer requiring it to remove the Goods and/or Equipment from the Company's premises or from any other premises at which they may be stored.
- 6.3 If the Customer fails to comply with the notice referred to in Clause 6.21(b) within 30 days from the date of such notice the Company will be entitled to sell or otherwise dispose of the Goods and/or Equipment and will be under no obligation to account to the Customer for the proceeds of such sale or other disposition except to the extent that such proceeds and the value of any payments already made by the Customer (other than any deposit paid, or advance payments expressed to be non-returnable) may exceed the amounts owing to the Company in connection with the Contract. The Company will be entitled in addition to its other rights and remedies to be credited or paid by the Customer for its charges and all expenses incurred in storage of the Goods and/or Equipment and for any costs and expenses incurred in connection with the sale or other disposal of the Goods and/or Equipment by the Company.

7. Services

- 7.1 Unless explicitly agreed otherwise, the place of performance of Services will be the Company's own premises and the Customer shall be responsible for delivering any Equipment to those premises for that purpose.
- 7.2 If the Services are to be performed, in whole or part, elsewhere then the Customer shall ensure that:
- (a) the Company's representatives are granted adequate access to the relevant location, including ensuring with sufficient security clearance;
- (b) the relevant location is tidy, clean, free of hazards and clear of obstructions;
- (c) the Company is given as much notice as is reasonably possible of any site security or health and safety protocols with which its representatives will be expected to comply; and
- (d) the Company's representatives are, free of charge, given access to and use of such electricity, water, gas, and compressed air supplies as may be necessary to perform the Services.

8. Price

- 8.1 Unless otherwise agreed by the Company in writing, all prices stated on the Company's quotations and order acknowledgements are for supply the Goods and/or Services on an ex-works basis and are exclusive of:

- (a) GST and all value added, sales, revenue, customs, import and export taxes, duties, fees, levies and tariffs (together "Taxes"), which if applicable to the supply the Customer shall also be liable to pay.
- (b) All packaging, transportation and intermediate storage costs and expenses that might be incurred by the Company in complying with its delivery obligations under the Contract. The Customer shall also be obliged to pay any reasonable surcharges charged by the Company to cover such costs and expenses.
- 8.2 Should the Company incur extra cost owing to suspension of the work by reason of the Customer's instructions or lack of instructions, or for any other cause for which the Customer is responsible, such extra cost will be added to the price of the Goods and/or Services and paid for accordingly.
- 8.3 A certificate of the Company's auditors as to the correctness of any increase made pursuant to this Clause 8.8 will be forwarded to the Customer if required and will be accepted as final.

IN RESPECT OF CONTRACTS FOR SERVICES ONLY THE FOLLOWING SUB-CLAUSES ALSO APPLY:

- 8.4 The provision of any spare parts or materials by the Company as an incidental or integral part of the Services will be charged in addition to the quoted price for labour at the Company's standard prices or dealt with by separate purchase order.
- 8.5 The Company's labour charges are applicable from the engineer's departure point to return destination. Travel time is charged at the site day rate/overtime rate as applicable.
- 8.6 Subsistence charges may include un-receipted items.
- 8.7 Any waiting time incurred by the Company's engineers, including weekend or local holiday layovers, will be charged at the appropriate day rate.
- 8.8 Charges quoted are based on stated time estimates. If additional hours are required to complete performance, which are not attributable to default on the part of the Company, the additional time will be charged at the Company's rates quoted in the Company's quotation or set out in the Company's order acknowledgement (the acknowledgement taking precedence in case of conflict). or if none are quoted, the Company's prevailing rates at the date of the Contract.
- 8.9 Any dispute as to the definition and scope of the Services will be decided by the Company in its absolute discretion and the Company's decision in this respect will be final and binding on the Customer.

9. Payment

- 9.1 Unless otherwise agreed in writing, payment will be due on the 30th day after issue of the Company's invoice for the relevant Goods or Services. The Company will be entitled to raise its invoice at such times as may be specified on its order acknowledgement, failing which at any time following delivery of the Goods or completion of the Services. Without prejudice to the Company's other remedies, any extended payment terms agreed by the Company will be immediately cancelled if any payment on any account due from the Customer to the Company is late.
- 9.2 The parties agree failure to pay the price of the Goods and/or Services or any part thereof on the due date for payment is a breach of an essential term of the Contract, entitling the Company to suspend provision of services or the contract thus releasing the Company from any liability under the Contract, and discharging the Company from the further performance of its obligations (including its obligation to make deliveries or further deliveries)
- 9.3 Time for payment of the contract price will be of the essence. The Customer will indemnify the Company against all expenses and legal costs incurred by the Company in recovering overdue amounts. Interest will be payable by the Customer on overdue amounts (before as well as after judgement) at the annual rate (compounded on a daily basis at 3% above the base rate of HSBC bank from time to time on the outstanding amount until the total price for the Goods and Services, and such costs and charges, are paid in full.
- 9.4 In addition and without prejudice to any other rights of set off to which the Company may be entitled whether by statute, at common law, by custom or otherwise, the Company will be entitled (if it elects to do so) to set off all or any debts and liabilities (whether present or future, certain or contingent, and whether ascertained or not) which the Company or any subsidiary or associated company of the Company may owe to the Customer on any account whatsoever.

10. Customer's Patterns or Other Property

- 10.1 The Company agrees to take reasonable steps to protect the Customer's patterns or other property against loss of or damage whilst in the Company's possession or in the course of being returned to the Customer.

The Customer shall bear all other risks relating to such property and shall be responsible for insuring such property accordingly.

11. Warranty

11.1 The Company warrants to the Customer that:

- (a) during the Warranty Period, the Goods will be free from defects in design, materials and workmanship;
- (b) during the Warranty Period, the Goods will comply with the specification expressly agreed by the Company in writing in the Company's order acknowledgement; and
- (c) the Services will be performed with reasonable skill and care.

11.2 The "Warranty Period" means:

- (a) in the case of Services and Goods supplied as an incidental or integral part of Services, 12 months from the date on which the Equipment is delivered back to the Customer or, in the case of Services performed at the Customer's site or a third party site, from the date of completion of the relevant Services; and
- (b) in the case of Goods supplied under any other circumstances, 12 months from delivery.

11.3 The Company will repair defective Goods or re-perform defective Services covered by the foregoing warranty, or if in the Company's judgement they cannot be satisfactorily repaired or re-performed will (at the Company's election) provide either:

- (a) a refund of such portion of the price of the defective Goods and/or Services as is appropriate in the circumstances; or
- (b) in the case of Goods, replacement Goods.

11.4 Goods and services supplied or repaired pursuant to a claim under this warranty will be subject to the same warranty as the original Goods and Services supplied, for the longer of three (3) months or the balance of the original warranty period.

11.5 The term of the Company's warranty shall not be extended by the fact that a defect, issue or non-conformity was latent or that it was not or could not have been discovered by the Customer within the Warranty Period.

11.6 The Company shall have no obligation under its warranty unless:

- (a) the Company is notified of the claim within a reasonable time of Customer becoming aware of the facts or circumstances justifying the claim but in any event no later than fourteen (14) days after the end of the Warranty Period;
- (b) the Company or its agent is given a reasonable opportunity to safely inspect the Goods or Equipment which are the subject of the claim;
- (c) the Goods or Equipment which are the subject of the claim are returned to the Company's premises with transportation charges prepaid unless the Company advises otherwise; and
- (d) the Customer furnishes satisfactory evidence that the Goods or Equipment in respect of which a claim is notified have been properly installed and maintained, correctly lubricated, operated only under normal conditions with competent supervision and within the load limits for which they are designed.

11.7 The Company shall have no liability and shall be released from any obligation under its warranty to the extent that the liability or obligation arises out of, is attributable to or is exacerbated by any of the following factors, events or circumstances:

- (a) failures by anyone other than the Company to use, operate, install, commission, package, transport, maintain, repair, store, uninstall or handle the Goods or Equipment in accordance with the Company's or the relevant manufacturer's instructions or, in absence of such instructions, in accordance with good industry practice;
- (b) provision by the Customer to the Company of any material, blanks or parts to be used in the Goods or Equipment;
- (c) compliance by the Company with any instruction or request made or on behalf of the Customer;
- (d) defects, deficiencies, cosmetic blemishes and non-conformities of the Goods or Equipment which constitute normal wear and tear;
- (e) use of the Goods or Equipment for any purpose or within any operating environment which it (or the relevant part of it) is not designed;
- (f) the Company's use of or compliance with any design, schematic or specification provided by or on behalf of the Customer; or
- (g) modifications or changes to the Goods or Equipment made by anyone other than the Company without its prior authorization.

In this sub-clause, references to the Company and Customer include their respective representatives, suppliers and contractors.

11.8 If the Customer has notified the Company of a defect and no defect is found for which the Company is liable, the Company will be entitled to reimbursement of the costs it has incurred as a result of the notice.

11.9 The Customer will at its own expense arrange for any dismantling and reassembly of any goods and equipment and the provision of all equipment (including without limitation lifting equipment and crane-age) to the extent that this is necessary to remedy the defect or facilitate re-performance of Services. Unless otherwise agreed, necessary transport of the Goods and/or parts thereof (and, if relevant, Equipment) to and from the Company in connection with the remedying of defects will be at the risk and expense of the Customer. The Customer will follow the Company's instructions regarding such transport.

11.10 the Customer will bear any additional costs the Company incurs as a result of the Goods or Equipment being located in a place other than the place of delivery, thus requiring additional transport.

11.11 Defective parts which have been replaced will be made available to the Company and will, if the Company chooses, become its property.

11.12 The Company is not liable for any failure to perform which is caused by the Customer's failure to prepare its or a third party's site or provide appropriate equipment or personnel.

11.13 The Company's warranty given in respect of repair, maintenance, upgrade or other aftermarket services is not an 'as new' warranty unless expressly warranted as such in the Contract. Except to the extent otherwise expressly agreed in the Contract, only the services actually performed, and the work actually done by the Company are warranted.

11.14 This clause 11 sets out the Company's entire obligation and liability with respect to breaches of the warranty above and in respect of defects, deficiencies, non-conformities or inadequacies of the Goods or Services. The Customer shall have no remedies for same other than the remedies set out in this clause, and the Company's shall not be liable to the Customer for any economic losses that might be suffered or incurred by the Customer as a consequence of such defects, deficiencies, non-conformities or inadequacies .

12. Heat Treating or Machining Customer's Material and Cutting Teeth in Customer's Blanks

12.1 The Company's prices for heat treating or machining Customer's material or cutting teeth do not include transport, handling, packaging or insurance. All metal removed will be the property of the Company and has been allowed for in the Company's price. [Should any material or blanks sent for machining, cutting teeth, grinding, hardening, flame cutting, welding, assembly or any other operation be spoiled, the Company will not be responsible for the value of such material or blanks or the cost of any prior operations performed thereon. This applies likewise to finished parts sent for fitting or other purposes.] The Company further disclaims any responsibility for the failure of all or any such materials, blanks or parts due to any defects in or inadequacy of them whatsoever.

12.2 The Customer warrants that any material, blanks or parts supplied by it will be free from defects, of suitable quality and fit for the purpose required for the Company's performance of the Contract, and accepts the risks associated with providing the Company with such materials. The Company will charge for work carried out to any material which is spoiled due to the unsuitability of such material and for any consequential damage to its cutters or other tools and the Company will not be responsible for replacements. The Company does not undertake to check or to rectify Customer's material, blanks or parts, neither does the Company accept responsibility for loss or damage to them after delivery.

12.3 The Company reserves the right to charge the Customer for any expenses incurred by the Company in rectifying the Customer's material, if the Company elects to do so, when such material has not been supplied to the correct dimensions.

13. Installation

13.1 Where the Contract provides for the supervision of installation of the Goods or Equipment by the Company the following provisions will apply.

13.2 The Company will provide the services of an engineer to advise upon:

- (a) the installation of the Goods; and
- (b) if specified in the tender or order confirmation, the checking for accuracy, testing and commissioning of the Goods.

13.3 The Customer will, at its own expense, provide all equipment, labour and other facilities required for the installation of the Goods. The employees provided by the Customer will remain the Customer's servants and under the Customer's control and the Company will not be liable for any act or

omission of such employees. The Customer warrants that all such employees are English-speaking and suitably qualified, skilled and experienced for the tasks allocated to them.

14. Tests After Installation

14.1 Where the Contract provides for the testing of Goods on completion of their installation, or of Equipment on completion of the Services, the tests will be carried out by the Company in the presence of the Customer and the Company will agree with the Customer on reasonable notice the date on which and the time at which the tests are to be made. Where the Customer has given the Company reasonable notice of the date on and time at which the tests are to be made and the Customer fails to attend such tests then the tests will proceed in its absence and will be deemed to have been made in its presence.

15. Title to The Goods

- 15.1 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these conditions, title to the Goods will not pass to the Customer until their full price and any other sums owing by the Customer to the Company, whether under the same or under any other contract have been paid.
- 15.2 The Customer will, if so required by the Company, assign to the Company the Customer's right to recover the price of the Goods from any sub-purchaser or take steps to recover the same for the benefit of the Company and account to the Company accordingly.
- 15.3 If the proceeds of such sub-sales exceed the amount payable by the Customer to the Company under Clause 15.1 the Company will refund or credit the difference to the Customer.
- 15.4 The Company will be entitled to exercise all and any of its rights under this condition notwithstanding that any period of credit provided for by the Contract has not expired at the time when it elects to do so.
- 15.5 Subject to this Clause 15 the Company will pass good unencumbered title to the Goods to the Customer.

16. Force Majeure

- 16.1 If a party cannot fulfil its any obligation under the Contract because of events or circumstances which are beyond its reasonable control and which, if foreseeable, could not have been avoided by the taking of reasonable precautions ("Force Majeure Events"), it shall be temporarily relieved of such obligations provided that it notifies the other party of its situation without delay. Examples of Force Majeure Events include any outbreak of hostilities (whether or not involving the Company's country of registration or principal residence and whether war is declared or not), terrorist acts, pandemic or epidemic disease, strikes, lock-outs, trade disputes or other labour difficulties, breakdowns, delays in transport, accidents, fire, flood, inadequate performance of, failure of or incorrect processing by computer systems, or in the event of national emergency, or if the Company's works should become either directly or indirectly so engaged on Government contracts under priority directions as to prevent, hinder or delay work on other contracts.
- 16.2 The party claiming relief from its obligations due to a Force Majeure Event must resume performance as soon as reasonably possible after the Force Majeure Event ceases to prevent performance of the relevant obligations, provided that the time for performance shall be automatically extended by the length of time the Force Majeure Event prevented performance.

17. Suspension

17.1 The Company shall be entitled, upon notifying the Customer, to suspend further performance of its obligations under the Contract if the Customer becomes more than 30 days overdue in respect of any payment due to the Company under it. The Company must resume performance of its obligations as soon as payment is made, provided that any deadline or timescale for performance shall be automatically extended by the duration of the suspension.

18. Termination

18.1 If the Customer (or, where the Customer is a firm, any partner therein) makes default in or commits any breach of any of the Customer's obligations to the Company or, if any distress or execution is levied on the Customer, the Customer's property or assets, or if the Customer becomes insolvent or makes or offers to make any arrangement or composition with its creditors, or commits any act of bankruptcy, or if any petition or receiving order in bankruptcy is presented or made against the Customer, or if the Customer is a limited company and is struck off or any resolution or petition to wind up such company is passed or presented (otherwise

than for bona fide reconstruction or amalgamation where the resultant entity is or agrees to be bound by the Contract), or if a receiver of such company's undertakings, property or assets or any part thereof is appointed, or if a nominee is appointed, the Company will be entitled forthwith to terminate any contract then subsisting between it and the Customer, and, upon written notice of such termination being posted by the Company to the Customer's last known address, any such contract then subsisting will be deemed to have been terminated, without prejudice to the Company's accrued rights and existing remedies against the Customer.

- 18.2 If the Contract provides for liquidated damages to be payable for any Goods for which delivery is delayed, the Customer may terminate the Contract insofar as it relates to the supply such Goods if the maximum liquidated damages are incurred. However, aside from payment of the accrued liquidated damages, the Company will have no financial liability to the Customer as a result of such termination.
- 18.3 If a party is unable to perform any material obligation under the Contract because of a Force Majeure Event which persists for at least 90 days, the other party will be entitled to terminate the contract upon giving the former party notice.

19. No Waiver

- 19.1 No time or other indulgence granted by the Company to the Customer will operate or be deemed to operate as a waiver or suspension of the Company's rights under these Conditions. The Company will be entitled at any time with or
- 19.2 without prior notice, to hold the Customer to strict performance of any outstanding or recurring obligations under the Contract

20. Indemnities

- 20.1 The Customer warrants that the use by the Company of any information, materials, drawings, designs or other matter provided by the Customer will not infringe the intellectual property rights (including without limitation trademarks, service marks, design rights, registered designs, patents, copyright, utility models, know how) of or asserted by any third party and will indemnify the Company against all damages, penalties, losses, costs and expenses to which the Company may become liable in the event that any allegation of infringement of such intellectual property rights is made or any work done by the Company pursuant to the Contract constitutes an infringement of any such intellectual property rights.
- 20.2 The Customer will indemnify the Company against any loss, damage or expense which may be incurred or sustained by the Company in the handling, defence, compromise or satisfaction of any claims addressed to the Company by any third party, including but not limited to claims brought by the Company's employees or agents, which arise from any negligence of the Customer or breach of the part of the Customer of any of its obligations under these Conditions.
- 20.3 The Customer will further indemnify the Company in respect of the handling, defence, compromise or satisfaction of any claims whatsoever by any third parties which may be brought against the Company to the extent that the Company thereby incurs any liability or expense arising out of the Contract (including liability resulting from the reasonable compromise of such claims) which arise otherwise than by reason of personal injury or death caused by the Company's negligence and in excess of the obligations assumed by the Company under the Contract as between the Company and the Customer, whether or not such claims arise or are founded upon any breach of contract or default, including negligence, on the part of the Company.

21. Company's Maximum Aggregate Liability

- 21.1 The Company's maximum aggregate liability pursuant to the Contract and/or in connection with the supply of the Goods and/or Services (whether such liability is to the Customer or the Customer's Group or to any third party entitled to claim under or in connection with the Contract), however such liability may arise, and whether in contract, tort, statutory liability, common law or otherwise, is limited to the price excluding GST, of the defective Goods or Services or, where the Company's default is a failure to deliver the Goods or Services, the price, excluding GST, of the undelivered Goods or Services.
- 21.2 Nothing in the Contract will be construed or interpreted as an attempt to limit the Company's liability for death, personal injury, fraud or any other liability that cannot be limited or excluded by law.
- 21.3 The Company shall have no liability for any indirect, special or consequential losses or for any loss of anticipated profits, loss of anticipated production, loss of reputation or goodwill, loss of anticipated

savings, loss of management time, or loss of use, regardless of how such losses might be classified at law. Furthermore, the Company shall have no liability for any punitive or exemplary damages.

- 21.4 Where the Contract provides a specific remedy for any breach of contract (including breach of warranty), act of negligence or any other cause of action, that remedy shall be the Customer's sole remedy for such cause of action, provided that nothing in this sub-clause shall prevent the Customer from availing itself of any rights and remedies available to it at law in order to enforce any obligation of the Contract for which no contractual remedy is specified or in order to enforce performance of any contractually specified remedy.

22. Time Limit for Claims

- 22.1 All claims whatsoever by the Customer under or in connection with this Contract will be extinguished and absolutely barred unless suit is brought within three (3) years of the date of delivery of the Goods (as defined by Clause 5) or, in the case of Services the date of on which they were last performed, provided nevertheless that nothing in these Conditions will preclude the Company from relying on any other period of limitation (whether statutory or otherwise) on which it would be entitled to rely apart from this Clause.

23. Third Party Rights

- 23.1 No third party will have any right of action pursuant to the Contract.

24. Notices

- 24.1 All notices to be given pursuant to the Contract must be given in writing (including email) and sent to the receiving party by courier or recorded mail, or by email, to the recipient's address stated on the Company's order confirmation or last known address of the recipient's main place of business, or in the case of email to the last known email address of any contact person stated on the order confirmation or the email address of any other contact persons subsequently advised by the recipient. Notices to be sent by post, courier or recorded mail shall be addressed to the recipient's address shown on the Company's order confirmation or to the last known address of its main place of business. Notices sent by recorded mail will be deemed to have been received 5 working days after posting. Notices sent by courier will be deemed to be received at the time and date the courier's delivery records show it to have been delivered. Notices delivered by email will be deemed to have been received at the time of sending, provided there is no reason for the sender to believe the transmission was not successful.

25. Confidentiality

- 25.1 Any drawings, and any documents conveying technical or confidential information with regard to the Company's products or its business, which may be supplied in connection with the Contract will remain the Company's property and will be returned immediately upon the Company's request. The Customer will also at all times treat all such drawings and documents and any other information regarding the Company's products or business which is of a confidential nature as matters confided to the Customer in strict confidence and will not itself use, or show or divulge such matters to any third parties without the Company's prior written consent, except so far as such use or such disclosure to employees or other persons is necessary for the business efficacy of the Contract, and in the event of such matters being disclosed to third parties, whether or not the disclosure be permitted, the Customer will ensure that such third parties observe similar confidence and will take all necessary steps to prevent any infringement. The provisions of this Clause 24 will not apply to information which is or becomes part of the public domain (other than through any breach of contract), or which comes lawfully into the possession of the Customer without any breach of confidentiality.
- 25.2 The Customer will not, under any circumstances, acquire any right in or to any intellectual property rights (as described in sub-Clause 20.1) subsisting in, resulting from or relating to the Goods and/or Services, or any documents, drawings and/or specifications relating thereto either supplied by the Company to the Customer in connection with the Goods and/or Services, or resulting from the provision of the Goods and/or Services, unless otherwise expressly agreed by the Company in writing. If the Customer will in any way acquire any such rights than the Customer will immediately inform the Company and will forthwith take such steps as may be required by the Company to assign such rights or vest such title in the Company.

26. PERSONAL PROPERTY SECURITIES ACT 2009

- 26.1 The terms "**financing statement**", "financing change statement", "**security agreement**", and "**security interest**" have the meanings given to them by the PPSA.
- 26.2 The Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and create a security interest in all Goods that have previously been supplied and that will be supplied in the future by the Company to the Customer.
- 26.3 The Customer undertakes to:
- promptly sign any further documents and provide any further information (complete, accurate and up to date in all aspects) which the Company may reasonably require to:
 - register a financing statement or financing change statement in relation to a security interest on the PPSR;
 - register any other document required to be registered by the PPSA; or
 - correct a defect in a statement referred to in clause 26.3(a)(i) or 26.3(a)(ii);
 - indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any security interest;
 - not register or permit to be registered a financing change statement in respect of a security interest without the prior consent of the Company;
 - not register or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the Company's prior consent; and
 - immediately advise the Company of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from sales.
- 26.4 The Company and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 26.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 26.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 26.7 Unless otherwise agreed to in writing by the Company, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 26.8 The Customer must unconditionally ratify any actions taken by the Company under Clauses 26.3 to 26.7.
- 26.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

27. Security and Charge

- 27.1 In consideration of the Company agreeing to supply the Goods under these terms and conditions, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty, personal property or other assets capable of being charged, including debts, owned by or to the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money). To protect the Company's secured interest, the Customer consent to the Company lodging a caveat over any real property, and/or to registering its security interest, PMSI, or PPSL on the Personal Property Security Register.
- 27.2 The Customer indemnifies the Company from and against all the Company's costs and disbursements including legal costs on a full solicitor/client indemnity basis incurred by the Company in exercising the Company's rights under this clause.
- 27.3 The Customer irrevocably appoints the Company and each director of the Company as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause including signing any document on the Customer's behalf.

28. Australian Law

- 28.1 The Contract will be construed in all respects under Australian law; and the High Court of Australia will have exclusive jurisdiction to hear and determine any action in respect of it, save that the Company will be entitled to seek injunctive or any other relief in the courts of any jurisdiction whatsoever.