

CONDITIONS OF SUPPLY

1. DEFINITIONS

1.1 The meanings of the terms used in this agreement are set out below.

Advance Payment: the amount required to be paid under clause 4.1 before work on an Order commences

Carrier: the transport provider engaged by the Supplier to transport Goods to the Customer

Supplier: APR Engineering Pty Ltd (ACN 069 044 908)

Conditions: the terms and conditions of this agreement

Customer: the Supplier's customer

Delivery Date: the date specified for delivery on the Order

Goods: the Goods supplied by the Supplier to the Customer pursuant to these Conditions

GST: the same meaning as in the GST Act

GST Act: the *New Tax System (Goods and Services Tax) Act 1999* (Cth)

Intellectual Property Rights: intellectual property rights including but not limited to the following rights:

- (a) patents, copyright, rights in circuit layouts, registered designs, trademarks and any right to have confidential information kept confidential; and
- (b) an application or right to apply for registration of any right referred to in subclause (a) of this definition.

Order: a written request by the Customer to the Supplier to purchase Goods from the Supplier

PPSA: *Personal Property Securities Act 2009* (Cth)

Price: the price of the Goods as agreed under clause 3.1

Related Entity: the same meaning as in the *Corporations Act 2001* (Cth)

Taxable Supply: the same meaning as in the *GST Act*

Construction

1.2 In this agreement:

- (a) a reference to a person is to be construed as a reference to an individual, body corporate, unincorporated association, partnership, joint venture or government body;
- (b) a reference to a statute includes a reference to all enactments amending or consolidating the statute and to an enactment substituted for the statute and any subordinate legislation, including regulations;
- (c) monetary references are references to Australian currency;
- (d) headings are included for convenience only and do not affect interpretation of this agreement.

2. CONDITIONS APPLICABLE

2.1 These Conditions apply to and form part of any agreement between the Supplier and the Customer for the supply by the Supplier of Goods to the Customer.

2.2 The Customer acknowledges and agrees that the Customer has read, understands and accepts these Conditions.

2.3 A request by the Customer for supply of Goods will be made by way of an Order transmitted by facsimile, email or post to the Supplier.

2.4 If the Order by the Customer is the acceptance of a valid and current quotation by the Supplier, the receipt of the Order by the Supplier:

- (a) will be deemed to be acceptance of the quotation to supply the Goods pursuant to these Conditions; and
- (b) will constitute an agreement between the Customer and Supplier for the supply of the Goods at the price stated in the quotation.

2.5 If the Order by the Customer refers to an invalid or expired quotation, the receipt of the Order by the Supplier will be deemed to be an offer by the Customer to purchase the Goods pursuant to these Conditions at the price stated in the quotation. The Supplier may:

- (a) accept the Order:
 - (i) in writing; or

- (ii) through the Supplier's conduct in execution or commencement of the work referred to in the Order; or

- (iii) by despatch of the Goods pursuant to the Order; or

- (b) refuse to accept the Order; or

- (c) provide a counter-offer in response.

2.6 Subject to clause 2.7 any variation or purported variation of these Conditions (including any special terms and conditions) will not apply unless agreed to by the Supplier in writing and signed by a director or secretary of the Supplier

2.7 The Supplier may vary these Conditions by giving notice to the Customer. Unless otherwise agreed by the parties, any such variation will apply to all Orders received by the Supplier after the date of variation.

3. PRICE FOR THE GOODS

3.1 The Price will be as agreed by the Customer and the Supplier at the time an Order is accepted by the Supplier.

3.2 The Price excludes all transportation costs, insurance and other charges or costs associated with the delivery of the Goods by the Supplier to the Customer. If the Supplier agrees to deliver the Goods, the Supplier may make an extra charge for delivery.

3.3 The Supplier may change its pricing policy at any time without notice but any Orders placed by the Customer and accepted by the Supplier prior to any change in pricing policy will be invoiced by the Supplier to the Customer at the Price.

4. PAYMENT

4.1 If the Customer does not have a credit account with the Supplier, if requested by the Supplier, the Customer must make an Advance Payment of all or part of the Price before the Supplier will commence work on the Goods in accordance with the Order.

4.2 When the Supplier has received the Advance Payment, the Supplier will commence work on the Goods and then supply the Goods in accordance with the Order.

4.3 If the Advance Payment is not paid within the time specified by the Supplier, the Supplier may cancel the Order.

4.4 If the Customer does not have a credit account with the Supplier and the Supplier does not require an Advance Payment:

- (a) the Customer must pay the Price within 14 days after notification by the Supplier pursuant to clause 6.2.

- (b) The Supplier will not, and is not obliged to:

- (i) deliver the Goods; and/or
- (ii) release the Goods for collection

until the Price and any storage or other charges have been paid by the Customer.

4.5 If the Customer has a credit account with the Supplier the Customer must pay the Price in accordance with the terms of its credit account with the Supplier. The Supplier reserves the right to require a Customer which has a credit account to make monthly progress payments whilst Goods are being manufactured.

4.6 If any payment made by the Customer is made by cheque or by electronic funds transfer, the Goods will not be considered as being paid for until clear funds have been received by the Supplier.

4.7 If the Customer does not pay the Price and other charges in accordance with this clause, without prejudice to any other right or remedy:

- (a) interest will accrue at the rate of 15% per annum on the amount outstanding from time to time, compounding monthly, until the Goods are paid for in full; and
- (b) the Supplier may recover the amount outstanding together with all interest owing, as a liquidated debt in a court or tribunal of competent jurisdiction irrespective of any alleged claim the Customer may have against the Supplier.

4.8 The Supplier must deliver a tax invoice to the Customer for the Goods:

- (a) In the case of a Customer which does not have a credit account with the Supplier, on or before delivering the Goods to the Customer.
- (b) In all other cases, within seven (7) days of notification pursuant to clause 6.2.

4.9 The Supplier may provide any tax invoice pursuant to these Conditions to the Customer by e-mail, facsimile, hand delivery or by making the tax invoice available for collection by the Customer.

5. THE GOODS

5.1 The Goods will be supplied in accordance with the description in the Order.

6. DELIVERY

6.1 The Supplier will use all reasonable means to complete the Goods on or before the Delivery Date. However the Customer agrees the Supplier will not be liable for any loss or expense, however caused, arising from delay in completion of the Goods or delivery of the Goods to the Customer on a date later than the Delivery Date.

6.2 The Supplier will notify the Customer (which notice may be given by telephone) of the date on which the Goods will be available for delivery or collection.

6.3 Delivery of the Goods will be deemed to have been made when the Supplier delivers the Goods to:

- (a) the address nominated by the Customer in the Order; or
- (b) upon collection of the Goods by the Customer.

6.4 The Supplier, in its discretion, may deliver the Goods to a Carrier to effect delivery of the Goods to the Nominated Address.

7. STORAGE

7.1 If:

- (a) the Customer agrees to collect the Goods from the Supplier and fails to do so within 14 days of notification by the Supplier under clause 6.2; or
- (b) the Customer fails or refuses to accept delivery of the Goods,

the Supplier reserves the right to make a reasonable charge for storage until such time as the Goods are delivered or collected, as the case may be.

8. ACCEPTANCE AND CANCELLATION

8.1 The Customer will be deemed to have accepted the Goods three days after delivery or collection of the Goods, as the case may be.

8.2 Unless otherwise agreed by the Supplier, an Order may not be cancelled once the Order has been accepted by the Supplier.

8.3 If the Supplier agrees to a request by a Customer to cancel an Order (**Cancellation Agreement**), the Customer will be and remain liable for all direct expenses incurred by the Supplier including the cost of all material acquired by the Supplier to complete the Order, together with an amount which represents the value of the time spent by the Supplier in relation to the Order prior to the Cancellation Agreement (**Cancellation Price**).

8.3 In the event of a Cancellation Agreement the Supplier will deliver to the Customer a tax invoice for the Cancellation Price (**Cancellation Invoice**).

8.4 The Customer must pay the Cancellation Price within 30 days of despatch of the Cancellation Invoice by the Supplier.

8.5 If the Customer does not pay the Cancellation Price within the time required under this clause, without prejudice to any other right or remedy:

- (a) interest will accrue at the rate of 15% per annum on the amount outstanding from time to time compounding monthly, until the Cancellation Price is paid in full; and
- (b) the Supplier may recover the Cancellation Price together with all interest owing, as a liquidated debt in a court or tribunal of competent jurisdiction irrespective of any alleged claim the Customer may have against the Supplier.

9. TITLE AND RISK

9.1 The Goods will be at the Customer's risk:

- (a) when the Goods have been completed by the Supplier; and
- (b) the Customer has been notified pursuant to clause 6.2 that the Goods are ready for collection or delivery.

9.2 If the Supplier delivers the Goods to a Carrier for transportation, it does so as agent for the Customer and the Customer agrees that the Supplier has no liability to the Customer for any delay in transportation or for the loss of or damage to the Goods or any part of the Goods during loading, unloading or transit or for any consequential losses.

9.3 If the Supplier agrees to deliver or in fact delivers the Goods to the Nominated Address:

- (a) The Goods are at the Customer's risk at all times;

- (b) The Supplier excludes all liability to the Customer for, and the Customer agrees to indemnify and to keep the Supplier indemnified against all and any claims by any person (including the Customer) in relation to any loss, damage, misdelivery, delay, deterioration, contamination or failure to deliver the Goods, whether arising because of breach of contract, or in bailment, tort (including negligence) or otherwise, or as a result of the Supplier's wilful act or omission or breach of statutory duty.

9.4 Title in the Goods supplied by the Supplier to the Customer does not pass to the Customer until:

- (a) in respect of Goods listed on a tax invoice provided to the Customer, the Customer has paid the invoice in full; and
- (b) the Goods and all other goods supplied by the Supplier to the Customer or any Related Entity of the Customer have been paid for in full; and
- (c) any money owing to the Supplier by the Customer or any Related Entity of the Customer has been paid by the Customer or the Related Entity and received by the Supplier in full.

9.5 If the Goods are sold by the Customer, the sale price for those Goods, or so much of it as represents the amount payable to the Supplier in accordance with these Conditions, will be held in trust by the Customer for the Supplier absolutely until such time as that amount is paid to the Supplier in accordance with clause 4 of these Conditions.

9.6 Until property and title in the Goods passes to the Customer in accordance with clause 9.4 the Customer will:

- (a) hold the Goods and each of them as bailee for the Supplier;
- (b) not create any absolute or defeasible interest in the Goods or claim any lien over the Goods; and
- (c) upon request made by or on behalf of the Supplier, deliver up the Goods to the Supplier.

9.7 If the Customer fails to deliver up the Goods upon a request made under clause 9.6(c), the Supplier, without prejudice to any other rights or remedies, may enter upon any premises owned, occupied or controlled by the Customer where the Goods are situated (without liability for trespass or any resulting damage) and retake possession of the Goods and the Supplier may keep or resell those repossessed Goods.

10. PPSA

10.1 All terms capitalised in this clause that are not defined in these Conditions take their meaning as defined in the PPSA.

10.2 The Customer acknowledges and agrees that these Conditions constitute a Security Agreement and create a Security Interest (which is a Purchase Money Security Interest) in the Goods (both current and future) supplied by the Supplier to the Customer and any Proceeds.

10.3 The Customer agrees to implement, maintain and comply in all material respects with procedures for perfecting the Supplier's Security Interest that arise under these Conditions.

10.4 The Purchase Money Security Interest will continue for any Goods coming into existence or for the Proceeds.

10.5 The Customer must do all things necessary to assist the Supplier to continuously perfect any Security Interest arising under these Conditions, including signing any documents or providing any information that the Supplier reasonably requests for the purposes of protecting its interest under the PPSA.

10.6 Until title passes from the Supplier to the Customer, the Customer will not and will not permit any Security Interest to be created in the Goods without the Supplier's written consent.

10.7 The Customer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to any Security Interest under these Conditions.

10.8 Everything which the Customer is required to do under this clause is to be done at the Customer's expense and the Customer agrees to reimburse the Supplier for these costs including any expenses incurred by the Supplier in registering or removing a financing statement or financing change statement on the Register.

10.9 The Customer must not lodge nor permit the lodgement of a financing change statement or an Amendment Demand in respect of the Goods without the Supplier's written consent.

10.10 The Customer must immediately notify the Supplier in writing of any change in the Customer's name or in the description of the Goods.

10.11 To the maximum extent permitted by the PPSA:

- (a) the Supplier is not required to give a notice to the Customer of any action it takes in accordance with sections 95 or 121(4) of the PPSA;

- (b) the Supplier is not required to give a notice under section 130 of the PPSA;
- (c) the Supplier is not required to give the details required under section 132(3)(d) of the PPSA;
- (d) the Supplier is not required to give a written statement of account under section 132(4) of the PPSA;
- (e) the Supplier is not required to give a notice required under section 135 of the PPSA;
- (f) no person can redeem a Security Interest in the Goods under section 142 of the PPSA without the Supplier's written consent; and
- (g) no person may reinstate the Security Agreement under section 143 of the PPSA without the Supplier's written consent.
- (h) For the purposes of section 275(6) of the PPSA, the Customer must keep confidential any information relating to these Conditions that is in the nature of information that an Interested Person could access under section 275(1) of the PPSA.

11. WARRANTIES

- 11.1 All warranties and conditions whether implied by Statute or otherwise are excluded to the extent permitted at law.
- 11.2 If the Customer is a consumer within the meaning of that term in the *Competition and Consumer Act 2010* (Cth) and the *Australian Consumer Law*, the Supplier makes each guarantee required of a supplier to a consumer under Part 3-2 of the *Australian Consumer Law* but only to the extent required by the nature of the Goods and the nature of the Customer and subject to clauses 9.2, 9.3 and 11.3.
- 11.3 If the Goods are intended to be used by the Customer for a specific purpose, the Customer must advise the Supplier of that particular purpose in the Order. If the Customer does not disclose the specific purpose for which the Goods are required in the Order, the Customer agrees it would be unreasonable for the Customer to rely on the skill or judgment of the Supplier to ensure the Goods are fit for the specific purpose.
- 11.4 The Supplier limits its liability to the Customer for breach of any term or guarantee incorporated into the agreement between the Supplier and the Customer by the *Competition and Consumer Act* or the *Australian Consumer Law* to the lowest of the following amounts:
- (a) the cost of replacing the Goods;
 - (b) the cost of obtaining equivalent Goods; or
 - (c) the cost of having the Goods repaired.

12. LIABILITY

The Supplier will be under no liability for any direct, indirect or consequential loss, damages or expenses suffered by the Customer or for any liability the Customer has or may have to any third party and indemnifies and agrees to keep the Supplier indemnified therefor.

13. INTELLECTUAL PROPERTY

The Customer acknowledges that, unless otherwise agreed in writing, the Supplier retains all Intellectual Property Rights associated with the Goods.

14. DEFAULT

If the Customer breaches any of these Conditions, the Supplier may refuse to supply Goods to the Customer and may take whatever action against the Customer it considers appropriate to recover any direct, indirect or consequential loss, damages or expenses that the Supplier has incurred or suffered as a result of that breach.

15. FORCE MAJEURE

The Supplier will not be liable for any breach of these Conditions arising from any act, event or omission or cause beyond the Supplier's control including but not limited to an Act of God, insurrection or civil disorder or disturbance, strikes, lockouts, war or military operations, national or local emergency, acts or omissions of government, highway authority or other competent authority, industrial disputes of any kind (whether or not involving the Supplier's employees), fire, lightning, explosion, flood, subsidence, inclement weather, acts or omissions of persons or bodies for whom neither the Supplier nor its employees, officers, contractors or sub-contractors is responsible, or any other cause outside the control of the Supplier and its employees, officers, contractors and subcontractors.

16. GENERAL

- 16.1 These Conditions are governed by and construed according to the laws in force in Queensland and the parties agree to submit to the non-exclusive jurisdiction of the courts of Queensland.
- 16.2 These Conditions constitute the entire agreement between the parties and any prior arrangements, agreements, representations or undertakings are superseded.
- 16.3 No right of the Supplier under these Conditions will be deemed to be waived except by notice in writing signed by the Supplier and such a waiver by the Supplier will not prejudice its rights in respect of any other or subsequent breach of these Conditions by the Customer. Any failure by the Supplier to enforce any clause of the Conditions, or any forbearance, delay or indulgence granted by the Supplier to the Customer, will not be construed as a waiver of the Supplier's rights under these Conditions.
- 16.4 In the event of any inconsistency between these Conditions and any terms or conditions as may be set out in an Order or other document supplied by the Customer, these Conditions prevail to the extent of any such inconsistency.
- 16.5 If any provision of these Conditions is not enforceable in accordance with its terms, other provisions that are self-sustaining are, and continue to be, enforceable in accordance with their terms.
- ## 17. GST
- 17.1 Unless specified otherwise, the consideration payable by the Customer has been fixed without regard to the impact of GST and is exclusive of GST.
- 17.2 If GST is or becomes payable on a Taxable Supply made under or in connection with these Conditions, the Customer must pay an additional amount equal to the GST payable on the Taxable Supply.
- 17.3 The additional amount payable under clause 17.2 must be paid at the same time as the consideration for the Taxable Supply or on the date on which the Supplier delivers the Invoice (whichever is later).