

**GENERAL CONDITIONS OF SALE (GCS01)****I. GENERAL**

1. The scope of deliveries and/or services (hereinafter referred to as "Supplies") shall be determined by the written declarations of both parties. Notwithstanding any acceptance by the Supplier or the provider of services (hereinafter referred to as the "Supplier") of any order from the Purchaser, any contract arising from any such acceptance shall be subject to these General Conditions of Sale unless and to the extent only that the Supplier agrees in writing to any other conditions.

**II. PRICES AND TERMS OF PAYMENT**

1. Prices shall be ex works, exclude packaging and are exclusive of GST.
2. If the Supplier is also responsible for assembly or erection and unless otherwise agreed, the Purchaser shall pay the agreed remuneration and any incidental costs required, such as but not limited to travel costs, costs for the transport of tools and equipment, and personal luggage as well as allowances.
3. An invoice will be issued after ex works delivery or acceptance of the services and payment shall be made in full within 30 days of invoice date.

**III. RETENTION OF TITLE**

1. Items pertaining to the Supplies ("Retained Goods") shall remain the property of the Supplier until receipt of full payment for the relevant Supply. If the Purchaser fails to make payment for the Supplies in full the Supplier reserves the right to recover from the Purchaser any Supplies.
2. Where the Purchaser fails to fulfil its duties, including failure to make payments due, the Supplier shall be entitled to cancel the contract and take back the Supplies in the case of continued failure following expiry of a reasonable time set by the Supplier; the statutory provisions that a time limit is not needed remain unaffected. The Purchaser shall be obliged to surrender the Supplies.

**IV. TIME FOR SUPPLIES; DELAY**

1. Times set for Supplies can only be observed if all documents to be supplied by the Purchaser, necessary permits and releases, especially concerning project plans, are received in time and if agreed terms of payment and other obligations of the Purchaser are fulfilled. Unless these conditions are fulfilled in time, times set shall be extended appropriately; this shall not apply where the Supplier is responsible for the delay.
2. If non-observance of the times set is due to a delay in mobilization or a force majeure event such as but not limited to war, rebellion, strike or lockout, natural disasters or terrorism, such time shall be extended accordingly.
3. The Supplier will not accept any form a Liquidated Damages unless agreed separately in writing.
4. If the delivery is delayed beyond a reasonable time the Purchaser shall declare whether the Purchaser cancels the contract due to the delayed Supplies or insists on the Supplies to be carried out. Items which are cancelled that are non-stocked items and/or made to order items will occur a cancellation fee of 20% to 60% depending on specifics of the Supply.
5. If dispatch or shipment is delayed at the Purchaser's request, the Purchaser may be charged storage costs at actual costs +10%.
6. Partial Supplies shall be allowed after prior approval of the Purchaser.

**V. TRANSFER OF RISK**

1. The risk shall pass to the Purchaser as follows:
  - a. if the Supplies do not include assembly or erection, at the time when the Supplies are delivered to the Purchaser's nominated delivery address.;
  - b. if the Supplies include assembly or erection, at the day of the purchaser accepting the Supplies or, if so agreed, after a fault-free trial run.
2. Should the delivery or acceptance of the Supplies be delayed by the Purchaser for a period of 7 (seven) days then the risk shall transfer to the Purchaser and the Supplier shall be entitled to issue an invoice immediately for the Supplies.

**VI. ASSEMBLY AND ERECTION**

Unless otherwise agreed in writing, assembly/erection shall be subject to the following provisions:

1. The Purchaser shall provide at its own expense and in good time:
  - a. all earth and construction work and other ancillary work outside the scope of the Supplier, including the necessary skilled and unskilled labour, construction materials and tools,
  - b. the equipment and materials necessary for assembly and commissioning such as scaffolds, lifting equipment and other devices as well as fuels and lubricants,

- c. energy and water at the point of use including connections, heating and lighting,
  - d. suitable dry and lockable rooms of sufficient size and adjacent to the site for the storage of machine parts, apparatus, materials, tools, etc. and adequate working and recreation rooms for the erection personnel, including sanitary facilities as are appropriate in the specific circumstances. Furthermore, the Purchaser shall take all measures it would take for the protection of its own possessions to protect the possessions of the Supplier and of the erection personnel at the site,
  - e. protective clothing and protective devices needed due to prevailing conditions on the specific site.
2. Before the erection work starts, the Purchaser shall make available of its own accord any information required concerning the location of concealed electric power, gas and water lines or of similar installations as well as the necessary structural data.
  3. Prior to assembly or erection, the materials and equipment necessary for the work to start must be available on the site of assembly/erection and any preparatory work must have advanced to such a degree that assembly/erection can be started as agreed and carried out without interruption. Access roads and the assembly/erection site itself must be level and clear.
  4. If assembly, erection or commissioning is delayed due to circumstances for which the Supplier is not responsible, the Purchaser shall bear the reasonable costs incurred for idle times and any additional travelling of the Supplier or the Supplier's personnel.
  5. The Purchaser shall attest to the hours worked by the Supplier's personnel towards the Supplier at weekly intervals and the Purchaser shall immediately confirm in writing if assembly, erection or commissioning has been completed and the Supplies have been accepted.
  6. If, after completion, the Supplier demands acceptance of the Supplies, the Purchaser shall comply therewith within a period of 7 (seven) days. In default thereof, acceptance is deemed to have taken place. Acceptance is also deemed to have been in effect if the Supplies are utilised, after completion of an agreed test phase, if any.

**VII. SUPPLIES RECEIVED FOR REPAIR**

Any Supplies accepted by the Purchaser for repair at the Supplier premises shall remain the property of the Purchaser. The Purchaser shall ensure the Supplies are adequately insured against loss or damage.

**VIII. RECEIVING OF SUPPLIES**

The Purchaser shall not refuse to receive Supplies due to minor defects.

**IX. DEFECTS AS TO QUALITY**

The Supplier shall be liable for defects arising out of faulty design, material or workmanship, hereinafter referred to as "Defects", as follows:

1. All Supplies where a Defect becomes apparent within 12 months from transfer of the risk to the Purchaser in accordance with Article V shall, at the discretion of the Supplier, be repaired, replaced or provided again free of charge irrespective of the hours of operation elapsed, provided that
  - a. the reason for the Defect had already existed at the time when the risk passed;
  - b. The Supplies were properly handled and operated in line with operation manuals and documentation provided;
  - c. the Supplier is notified within 14 days of the defect occurring.
2. The Supplier shall be given the opportunity to make good its Supplies within a reasonable period.
3. If the Supplier fails to make good its Supplies within a reasonable period, the Purchaser shall be entitled to reduce the remuneration for the faulty part of the Supplies only.
4. There shall be no claims based on Defect in cases of insignificant deviations from the agreed quality, of only minor impairment of usefulness, of natural wear and tear or damage arising after the transfer of risk from faulty or negligent handling, excessive strain, unsuitable equipment, defective workmanship, inappropriate foundation soil or from external influences not assumed under the contract, or from non-reproducible software errors. Claims based on Defects attributable to improper modifications or repair work carried out by the Purchaser or third parties and the consequences thereof shall be likewise excluded.
5. 10. Furthermore, the provisions of Art. XI (Limitation of Liability) shall apply in respect of claims of damages. Any other claims of the Purchaser against the Supplier or its agents or any such claims exceeding the claims provided for in this Art. VIII, based on a Defect, shall be excluded.

**GENERAL CONDITIONS OF SALE (GCS01)****X. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS**

1. All Confidential Information which the Purchaser has access to must be maintained in strict secrecy and confidence by the Purchaser. The Purchaser may only use the Confidential Information for the purposes of this agreement and except to the extent required by law, the Purchaser shall not disclose that Confidential Information to any third party without the prior written consent of the Supplier.
2. Ownership of all intellectual property rights developed or created by the Supplier (including without limitation any sketches, designs, reports, plans, drawings, specifications and samples) shall always be vested in the Supplier.
3. Unless otherwise agreed, the Supplier shall provide the Supplies free from third parties' intellectual property rights and copyrights (hereinafter referred to as "IPR") with respect to the country of the place of destination. If a third party asserts a justified claim against the Purchaser based on an infringement of an IPR with respect to the Supplies made by the Supplier and then used in conformity with the contract, the Supplier shall be liable to the Purchaser within the period stipulated in Art. VIII No. 1 as follows:
  - a. The Supplier shall choose whether to acquire, at its own expense, the right to use the IPR with respect to the Supplies concerned or whether to modify the Supplies such that they no longer infringe the IPR or replace them. If this would be unreasonable to demand from the Supplier, the Purchaser may cancel the contract or reduce the remuneration pursuant to the applicable statutory provisions. b) The Supplier's liability to pay damages shall be governed by Art. XI.
  - b. The above obligations of the Supplier shall only apply if the Purchaser
    - i. immediately notifies the Supplier of any such claim asserted by the third party in writing,
    - ii. does not concede the existence of an infringement and
    - iii. leaves any protective measures and settlement negotiations to the discretion of the Supplier.
4. If the Purchaser stops using the Supplies to reduce the damage or for other good reason, it shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.
5. The Supplier herewith reserves any industrial property rights and/or copyrights pertaining to its cost estimates, drawings and other documents (hereinafter referred to as "Documents"). The Documents shall not be made accessible to third parties without the Supplier's prior consent and shall, upon request, be returned without undue delay to the Supplier if the contract is not awarded to the Supplier. Sentences 1 and 2 shall apply mutatis mutandis to documents of the Purchaser; these may, however, be made accessible to third parties to whom the Supplier may rightfully transfer Supplies.
6. The Purchaser shall have the non-exclusive right to use standard software, provided that it remains unchanged, is used within the agreed performance parameters, and on the agreed equipment. The Purchaser may make one back-up copy without express agreement.
7. Claims of the Purchaser shall be excluded if it is itself responsible for the infringement of an IPR.
8. Claims of the Purchaser shall also be excluded if the infringement of the IPR is caused by specifications made by the Purchaser, to a type of use not foreseeable by the Supplier or to the Supplies being modified by the Purchaser or being used together with products not provided by the Supplier.
9. Any other claims of the Purchaser against the Supplier or its agents or any such claims exceeding the claims provided for in this Article IX, based on a defect in title, shall be excluded.

**XI. INDEMNITY**

The Supplier shall indemnify the Purchaser and its personnel (the Indemnified) against all liabilities incurred by the Indemnified arising out of any loss or damage to property and claims by persons in respect of personal injury or death, to the extent the loss, damage, injury or death was caused by an act or omission of the Supplier or its personnel.

**XII. LIMITATIONS OF LIABILITY**

1. Notwithstanding any other provision of the contract, the liability of the Supplier to the Purchaser, whether arising under or in connection with the contract or the performance or non-performance thereof or anything incidental thereto, and whether by way of indemnity, by statute (to the extent that it is possible to exclude such liability), in tort (for negligence or otherwise), or on any other basis in law or equity is hereby limited and excluded as follows:

- a. The Supplier shall have no liability whatsoever to the Purchaser for loss of use, production, profit, revenue, business, data, contract or anticipated saving, or for any financing costs or increase in operating costs or any economic loss or for any special, indirect or consequential loss or damage;
  - b. the total aggregate liability of the Supplier to the Purchaser is limited to the amount equal to the contract price.
2. The Trade Practices Act, 1974, implies warranties, terms and conditions in consumer contracts which cannot be excluded or modified except as permitted under that Act. In the event the Supplier may be in breach of any such warranty, term or condition as is implied in this contract, the liability of the Supplier shall be limited:
    - a. in respect of goods, at the Supplier option, to the repair or replacement of the goods or the cost of repairing or replacing the goods;
    - b. in respect of services, at the Supplier option, to the re-performance of the services or the cost of re-performing the services.
  3. For the purposes of this Article XI, the Supplier contracts also on behalf of and as agent of any or all subcontractors and suppliers of the Supplier in connection with the contract which are bodies corporate related to the Supplier (as defined in the Corporations Law). The cumulative liability of the Supplier and all such subcontractors and suppliers to the Purchaser shall not, in aggregate, exceed the liability of the Supplier to the Purchaser.
  4. The Purchaser shall ensure that the liability of the Supplier to the end user(s) or owner(s) or beneficiary(ies) of the Supplies the subject of the contract is limited and excluded in accordance with this clause. The Purchaser indemnifies the Supplier against claims of any kind by such end user(s) or owner(s) or beneficiary(ies) to the extent that the Supplier would not be liable therefor to the Purchaser under the contract if the claim had been made by the Purchaser.

**XIII. CANCELLATION OF ORDERS**

If the Purchaser changes or cancels the order or any part thereof after the Supplier issued an order confirmation, the Purchaser will be liable to pay cancellation fees of 20% to 80% of the order value. Stock items may incur a restocking charge of 5% to 20% of the order value.

**XIV. APPLICABLE LAW**

The contract shall be governed by the law of the State of New South Wales and the parties agree to submit to the jurisdiction of the courts of that State and any courts having appellate jurisdiction from them.

**XV. SEVERABILITY CLAUSE**

The legal invalidity of one or more provisions of this contract shall in no way affect the validity of the remaining provisions. This shall not apply if it would be unreasonable for one of the parties to continue the contract.

**XVI. TERMINATION**

Either Party may terminate this agreement with immediate effect, by notice to the other Party, if the other Party:

1. commits a material breach of the Agreement and fails to remedy the breach within 30 days (or any other reasonable period agreed between both Parties) after receipt of a notice from the non-defaulting Party;
2. has not paid an amount due and owing under the agreement;
3. suffers an insolvency event.

**XVII. DISPUTE RESOLUTION**

Any dispute arising out of or in connection with this agreement (hereinafter referred to as Dispute) shall be notified to the other party in writing.

The Dispute shall be submitted for negotiation between the respective Executive Managers of the parties. If the Dispute has not been resolved within 21 days the Dispute shall be referred to mediation by a mediator appointed by the President of the Institute of Arbitrators and Mediators Australia. An agreement shall be reached within 30 days and shall be binding to both Parties.