

Weidmüller Pty Ltd, ABN 98 000 938 590

1. **DEFINITIONS**

Buyer means the legal entity that accepts the quotation from the Seller for the sale of Goods or whose order for the Goods is accepted by the Seller.

Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) or the *Consumer Guarantees Act 1993* (NZ) (as applicable), as amended or replaced from time to time. Any reference to any particular part or section of the *Competition and Consumer Act 2010* (Cth) shall be taken to refer to the equivalent part or section of the *Consumer Guarantees Act 1993* (NZ).

Contract means the legal relationship created between the Buyer and Seller in agreeing to an exchange of Goods in return for consideration resulting from an offer and acceptance.

Goods mean the merchandise or service that the Seller agrees to supply to the Buyer.

PPSA means the *Personal Property Securities Act 2009* (Cth) or the *Personal Property Securities Act 1999* (NZ) (as applicable), as amended or replaced from time to time. Any reference to any particular part or section of the *Personal Property Securities Act 2009* (Cth) shall be taken to refer to the equivalent part or section of the *Personal Property Securities Act 1999* (NZ).

PPSR means the personal property securities register as specified under the PPSA.

Related Body Corporate has the same meaning as set out in section 9 of the *Corporations Act 2001* (Cth) or the term "related company" as set out in section 2 of the *Companies Act 1993* (NZ) (as applicable), as amended or replaced from time to time.

Seller means Weidmüller Pty Ltd and its Related Bodies Corporate.

2. **VALIDITY & ACCEPTANCE**

- 2.1 The offer made by a quotation is valid for 30 days from the date of quotation, unless specifically shown elsewhere on the quotation or an extension to the quotation validity is granted in writing.
- 2.2 The Buyer may accept our quotation in writing, by conduct or by actions including but not limited to issuing a purchase order.
- 2.3 In the event that the Buyer fails to accept our quotation and to avoid all doubt, by proceeding to place an order, the Buyer shall be deemed to accept these terms and conditions as applying to all sales of Goods made by the Seller to the Buyer unless these terms and conditions are specifically excluded (in writing) in an alternate contract that has been entered into by the Seller and the Buyer or between their respective Related Bodies Corporate.
- 2.4 Upon acceptance of our Quotation pursuant to clause 2.2 or 2.3, the Buyer and the Seller enter into the Contract, which is expressly subject to and conditional upon these terms and conditions of sale.
- 2.5 The Buyer must follow any acceptance of our quotation by issuing a purchase order. In the event we do not receive your purchase order within 3 working days of receiving your written acceptance of our quotation, we will proceed with supply of Goods on the basis of our accepted quotation and these terms and conditions of sale.
- 2.6 Our quotation includes only such equipment, accessories and work as specified therein. If the Buyer gives us any verbal instruction to proceed with the supply of Goods which we choose to accept, that supply will be deemed to be on the basis of these terms and conditions of sale.
- 2.7 The Seller reserves the right not to accept any orders received from the Buyer or any prospective purchaser.
- 2.8 The Buyer agrees that:
 - (a) it will only sell, resell or distribute the Goods to end users of the Goods through channels that it controls. Examples of such channels include but are not limited to the Buyer's own website(s), distribution network or physical store(s). Examples of channels that are not controlled by the Buyer include but are not limited to eBay, Amazon and similar platforms; and
 - (b) it will not sell, resell or distribute the Goods to other reseller, or through any third party or marketplace websites without the prior written approval of the Seller;
 - (c) it shall not market and sell the Goods in the territories or to the persons or organisations not permitted by the Seller's internal policy as updated and communicated by the Seller to the Buyer from time to time. As Weidmüller is a global company, it is required to taken into account the persons, organisations and territories that may be subject to sanction by various sovereign entities.

3. **ORDERS & SPECIFICATIONS**

- 3.1 Any advice or recommendation given by the Seller or its employees or authorised agents to the Buyer or its employees or authorised agents regarding storage, use or application of the Goods is given in good faith and does not constitute a guarantee of suitability or fitness for use. The Buyer shall at all times remain responsible for the application of the Goods and the Seller's liability in this regard shall be limited absolutely to the providing Goods in compliance with published specifications.
- 3.2 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.
- 3.3 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of the order submitted together with supplying any necessary information pertinent to the Goods within a sufficient time to enable the Seller to perform the terms of the order.
- 3.4 The quantity, quality and description of, and any specification of the Goods shall be those stipulated in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller). Unless otherwise accepted by the Seller, minimum or standard-pack quantities for the Goods, as shown in the Seller's price list, are applicable and may only be ordered accordingly.
- 3.5 The Seller reserves the right to make any changes in the specification of the Goods necessary to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect its quality or performance.
- 3.6 If the Goods are to be assembled or produced in accordance with a specification stipulated by the Buyer or the Buyer requires additional

STANDARD TERMS & CONDITIONS OF SALE - Effective June 2019

processing to be undertaken by the Seller in accordance with a specification stipulated by the Buyer, then the Buyer agrees to indemnify the Seller and its agents against any loss, damages, costs and expenses awarded against or incurred by the Seller in respect of any infringement of intellectual property rights which may arise from the Seller using the Buyer's specification.

3.7 In the event the Buyer suspends or cancels any part or all of the order, the Seller reserves the right to seek compensation from the Buyer for all costs incurred or committed inclusive of any other expenses and loss of profits as at the date of suspension or cancellation.

4. **PRICES & PAYMENT TERMS**

4.1 Unless otherwise specified, all prices are quoted net FCA (Free Carrier, Incoterms® 2010) in Australian Dollars. All prices exclude freight, carriage, insurance, non-standard packaging charges, GST and sales taxes (as applicable). To avoid doubt, the parties agree that delivery and transfer of risk shall be in accordance with clause 5.2.

4.2 Where the Buyer requires freight to be pre-paid, goods despatched to the metropolitan areas of Adelaide, Brisbane, Canberra, Melbourne, Newcastle, Perth, Sydney and Wollongong via the Seller's normal carriers shall incur a standard handling charge of \$20.00 per order. Freight charges for goods despatched to other areas or by other than the Seller's normal carriers shall be billed to the Buyer's account at cost.

4.3 For orders with a net value of less than \$100.00 a small order surcharge of \$10.00 will apply.

4.4 Standard payment terms for Buyers who have approved credit accounts with the Seller are net 30 days from the date of statement unless otherwise agreed in writing. Payment terms for Buyers without approved credit accounts are full payment by cash or company cheque prior to shipment or collection. For overseas Buyers without approved credit accounts, full payment is due by telegraphic transfer prior to shipment or collection or may be made by an irrevocable letter of credit payable on presentation of shipping documents with provision for partial and third-party shipments.

4.5 The Seller reserves the right to charge interest at the rate of 1.5% per month on all overdue accounts.

4.6 The Buyer agrees that expenses and disbursements incurred by the Seller in recovering any overdue payment including debt collection agency costs will be charged to the Buyer's account.

5. **TITLE AND RISK**

5.1 Retention of title

(a) The Seller retains legal and equitable title in any Goods supplied to the Buyer until payment in full for or in connection with the supply of the relevant Goods has been received by the Seller. Until payment in full has been received, the following terms apply.

(b) Notwithstanding that title in the Goods remains with the Seller until payment has been received in full, the Buyer may sell such Goods or use the Goods in a manufacturing or construction process in the ordinary course of the Buyer's business. As between the Buyer and the purchaser of any item of the Goods, the Buyer sells as principal and not as an agent of the Seller. The Seller agrees to either:

(i) hold the proceeds of sale of each item of Goods in a separate fund on trust for the Seller and the Buyer is under a duty to account to the Seller for such proceeds. The creation of, or any failure of, any such trust shall not in any way limit the obligation of the Buyer to pay an amount to the Seller for Goods supplied; or

(ii) account to the Buyer for the proceeds of sale of each item of Goods.

(c) Until the Goods are sold or used in a manufacturing or construction process, the Buyer must keep the Goods safe and free from deterioration, destruction, loss or harm, clearly designate the Goods as the property of the Seller, store them in such a way that they are clearly identified as the property of the Seller and keep full and complete records, first, of the physical location of the Goods and, secondly, the ownership of the Goods by the Seller.

(d) The Buyer agrees that:

(i) the Seller is irrevocably entitled at any time and from time to time before sale of any item of Goods by the Buyer to inspect or to recover and retake possession of such Goods and otherwise exercise in relation to the Goods any of its rights whether those rights are as owner or unpaid Seller or both or otherwise and whether those rights are conferred by common law, contract, statute or in any other way;

(ii) in order to exercise such entitlement, the Seller and its agents are irrevocably authorised by the Buyer to enter any of the Buyer's premises or vehicles or those of any third party; and

(iii) the Buyer shall obtain the consent of any such third party to such entry by the Seller and to indemnify the Seller and its agents for any liability arising from any entry upon such third parties' premises or vehicles;

(e) The Seller and its agents agree to take all reasonable care in removing the Goods from such premises or vehicles but, to the extent this liability may be disclaimed by law, are not liable for any damage or injury to such premises caused by the removal of the Goods.

(f) The Buyer agrees that this reservation of title and ownership is effective whether or not the Goods have been altered from their supplied form or commingled with other goods.

5.2 Risk

Notwithstanding anything in clause 4.1, risk in relation to any Goods passes to the Buyer on delivery of the Goods. Delivery of Goods will be at the Seller's premises on collection of the Goods by the Buyer, its employees, agent or contractors. If the Seller has expressly agreed to ship the Goods at its cost, risk in the Goods passes immediately on delivery of the Goods to the Buyer's designated place of delivery by the Seller or its agent.

6. **SECURITY AND GUARANTEE**

6.1 Security interest

(a) The retention of title arrangement described in clause 5 constitutes the grant of a purchase money security interest by the Buyer in favour of the Seller in respect of all present and after acquired Goods supplied to the Buyer by the Seller.

(b) The Buyer must immediately, if requested by the Seller, sign any documents, provide all necessary information and do anything else required by the Seller to ensure that the Seller's purchase money security interest is a perfected security interest.

- (c) The Buyer will not enter into any security agreement that permits any other person to have or to register any security interest in respect of the Goods or any proceeds from the sale of the Goods until the Seller has perfected its purchase money security interest.
- (d) The Buyer agrees that the Seller is entitled to register its security interest granted under these terms on the PPSR.
- (e) For any Goods supplied that are not goods that are used predominately for personal, domestic or household purposes, the parties agree to contract out of the application of ss 95, 118, 121(4), 130, 132(4), 135, 142 or 143 of the PPSA in relation to the Goods.
- (f) The Buyer hereby waives any rights the Buyer may otherwise have to:
 - (i) receive any notices the Buyer would otherwise be entitled to receive under ss 95, 118, 121, 130, 132 or 135;
 - (ii) apply to a Court for an order concerning the removal of an accession under section 97;
 - (iii) object to a proposal of the Buyer to purchase or retain any collateral under ss 130 and 135; or
 - (iv) receive a copy of a verification statement confirming registration of a financing statement, or a financing change statement, relating to any security interest the Seller may have in Goods supplied to the Buyer from time to time.
- (g) The Seller agrees to pay any charges of and incidental to registration of the security interest created by these terms and conditions of sale pursuant to the PPSA on the PPSR.
- (h) If the Seller has cause to exercise any of its rights under the PPSA, the Buyer shall indemnify the Seller in relation to any claims made against the Seller by any third parties as a result of such exercise.
- (i) For the purposes of this clause, the expressions "accession", "collateral", "financing statement", "financing change statement", "security agreement", "security interest", "perfected security interest" and "verification statement" have the meanings given to them under, or in the context of the PPSA. References to sections are to sections of the PPSA.

6.2 **Buyer's Obligations**

- (a) The Buyer has requested the Seller facilitate the extension of credit terms by the Seller to the Buyer. The Buyer acknowledges that the Buyer will receive a valuable commercial benefit as a result of the Seller facilitating the extension of credit terms.
- (b) The Buyer agrees that it must pay all amounts payable to the Seller from time to time for the supply of Goods to the Buyer when they are due including interest and taxes. The Buyer's guarantee continues until all these amounts have been paid in full.
- (c) The Buyer must pay the Seller for its reasonable costs in administering (including enforcing or taking any other action in connection with its rights) any and all security interests created in respect of the Goods.
- (d) The Buyer's obligations to pay will not be affected by any refusal by the Seller to provide further credit to the Buyer or a variation in the Seller's standard terms and conditions between the Seller and Buyer.
- (e) The Seller may, at its absolute discretion, at any time release or discharge the Buyer from its obligation to pay, allow time for payment, accept any composition from or make any other arrangements with the Buyer without releasing or discharging any guarantor or otherwise prejudicing or affecting the Seller's rights and remedies against the Buyer.
- (f) The Buyer may not, without the Seller's consent, reduce the Buyer's liability to make payment to the Seller by claiming that the Buyer or any other person has a right of set-off or counterclaim against the Seller.
- (g) Where the Buyer is a partnership no change in the constitution of the partnership shall affect, impair or discharge the liability of the Buyer to make payment or under an indemnity whether past, present or future notwithstanding the provisions of any legislation or any other similar enactment in amendment, modification or substitution regulating partnerships.
- (h) A statement in writing signed by an authorised officer of the Seller, setting out the moneys due or owing to the Seller at the date of the statement shall be sufficient evidence of the amount so due or owing until the contrary is proven;
- (i) Where the Buyer enters into a Contract as a trustee of any trust, then the following provisions shall apply:
 - (i) the Buyer shall be personally liable for the performance of all obligations and undertakings under these terms and conditions of sale and the Contract;
 - (ii) the Buyer warrants that the Buyer has full, complete and valid authority pursuant to the trust to agree to these terms and conditions of sale and enter into the Contract;
 - (iii) the Buyer represents that the Buyer has the financial capability to fulfil its obligations under these terms and conditions of sale and any Contract; and
 - (iv) notwithstanding that there is no reference to a specific trust, the Seller's rights of recourse shall extend to both the Buyer's assets personally and the assets of the trust.
- (j) the Buyer represents to the Seller that the Buyer's rights of indemnity from the trust assets have not been excluded by the provisions of the trust or by any breach of trust or otherwise and that the Buyer will not release or otherwise prejudice such rights of indemnity.
- (k) The Buyer's obligation to pay to the Seller the amounts referred to under these terms and conditions of sale and any Contract is a primary obligation and the Seller is not obliged to proceed against or enforce any security or other right against the Buyer or demand payment from the Buyer before those amounts become due for payment.

7. **FIXED AND FLOATING CHARGE**

7.1 As security for all moneys now or hereafter to become owing or payable to the Seller by the Buyer or enforcement of these terms and conditions of sale, the Buyer agrees to hereby charge every undertaking and all of its assets (including rights, title and interests) of whatsoever nature (both present and future) to the Seller.

7.2 The charge hereby created ("the Charge") shall operate as:

- (a) a fixed charge in regard to insurance policies, bank accounts of the Buyer, debts owed to the Buyer, account receivables, other documents relating in any way to the business transactions of the Buyer and all securities negotiable or otherwise, shares and documents

evidencing right to possession of any property and any right of the Buyer against (including the right to receive any payment from) another security provider; and

(b) as a floating charge in respect of all other assets including stock-in-trade, inventory and raw materials.

7.3 The Buyer must immediately, if requested by the Seller, sign any documents and provide all necessary information and do anything else required by the Seller to ensure that the Seller's interest (the Charge) is perfected or enforced (or both). The Buyer also appoints the Seller as its irrevocable attorney for the purposes of executing any documents and taking any action required to protect the Seller's interest in the Goods.

7.4 The Buyer represents that nothing in this clause 7 breaches any covenant, obligations, promise or undertaking that the Buyer may have entered into with any third party and acknowledges that the Seller:

(a) relies on this representation; and

(b) if this is untrue, will suffer significant direct and indirect detriment arising from sale of the Goods to the Buyer.

8. **DELIVERY, STORAGE & RETURNS**

8.1 All dates quoted for delivery of Goods are approximate and are subject to availability. The Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time of delivery shall not be the essence of the Contract unless agreed in writing. The Seller however reserves the right to make partial delivery of the Goods and each partial delivery shall, for the purpose of payment, be deemed as a separate contract and will be invoiced respectively. The Goods may be delivered by the Seller in advance of the quoted delivery date unless specifically excluded by the Buyer in his written purchase order.

8.2 Where no method of delivery of the Goods has been specified, the Buyer shall give the Seller all necessary instructions and authority for making all necessary arrangements such that the delivery may be effected within 5 working days after the Seller notifies the Buyer of the availability of the Goods. All claims for non-delivery or damage to the Goods must be made in writing to the Seller within 14 days of despatch date.

8.3 In the event of any delay or failure of delivery due to unforeseen circumstances or factors beyond the control of the Seller, the Seller shall not be deemed to be in breach of the Contract, and the Buyer shall grant the Seller an extension of the delivery time so as to fulfil the obligations of the Contract.

8.4 If the Seller is unable to fulfil an order, it shall notify the Buyer as soon as reasonably practical, and this Contract shall terminate. The Seller and the Buyer agree that termination of this Contract for the Seller's inability to fulfil an order shall not give rise to any right to claim any costs, charges, damages or penalties against the Seller.

8.5 The Buyer may not return the Goods or any part of the Goods to the Seller after delivery unless an approved returned goods authorisation number is obtained in advance and a copy of same is issued to Seller on return of Goods as evidence of acceptance of return. The Seller will not under any circumstance accept for credit any goods returned without approval and will not be held responsible for their disposition.

8.6 In the event the Seller agrees to accept Goods for return by issuing a returned goods authorisation number the following conditions will apply to the return of such goods:

(a) All freight charges incurred to return Goods to point of supply must be prepaid by the Buyer.

(b) A copy of the original Seller's invoice must accompany all returned Goods.

(c) Reference the returned goods authorisation number.

(d) Goods to be returned must be either the original supplied quantities or in full pack quantities and be in "as new" saleable condition.

(e) Goods specially ordered on indent or those of a custom nature are not returnable.

(f) All applications for return of Goods must be made within 90 days of the original invoice date.

(g) No returns will be accepted for goods with an invoice value less than \$50.00.

(h) A restocking charge of 25% of the invoice value will apply to Goods accepted for return. If the Buyer orders (at the time of return of goods) alternate Goods with a value equivalent to the invoice value of the returned Goods, or higher, this restocking charge will be reduced to 10% of the invoice value.

9. **WARRANTIES & LIABILITIES**

9.1 The Seller warrants that the Goods conform to their published specifications as at the time of delivery and will be new and free of defects in material and workmanship. The Seller further warrants that it will repair or replace, in its sole discretion, any defects in material or workmanship which become apparent within 12 months from the date of shipment.

9.2 Notwithstanding the above, the Seller shall be under no liability in respect of any defect arising from any drawing, design or specification supplied by the Buyer. Any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to comply with the Seller's instructions (whether in writing or verbal), misuse, alteration or repair of the Goods without the Seller's written consent or use or application of the Goods with incompatible products will render all claims null and void.

9.3 The above warranty does not cover or extend to parts, materials or equipment not manufactured by the Seller in which respect the Buyer shall only be entitled to the benefit of any such warranty or guarantee given to or extended by the original manufacturer or third party to the Seller.

9.4 Subject to clauses 8.5 and 8.6, the Seller shall not be liable for any injury, loss or damage (whether direct or consequential) arising from any defect in, or in the operation of, any Goods or part thereof or from loss of use thereof caused by any act or omission of the Seller or agents (including negligent acts or omissions) and the Seller shall also not be liable for any loss of profit, revenue, opportunity or savings. The Buyer, in purchasing Goods from the Seller agrees in this respect to further fully indemnify the Seller and its agents against any claims which may be made against the Seller by any third party in respect of such injury, loss or damage.

9.5 To the extent that Goods supplied by the Seller are not goods of a kind ordinarily acquired for personal, domestic or household use and the Buyer is deemed to be a consumer for the purposes of section 64A of the *Competition and Consumer Act 2010* (Cth), the Buyer agrees that the Seller's liability for a failure to comply with a consumer guarantee that the Buyer may have a benefit under the Consumer Law (other

than a guarantee under ss 51 (title), 52 (undisturbed possession) and 53 (undisclosed securities) of the *Competition and Consumer Act 2010* (Cth)), is limited to, at the option of the Seller, one or more of the following:

- (a) replacement of the goods or the supply of equivalent goods;
- (b) the repair of the goods;
- (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (d) the payment of the cost of having the goods repaired.

9.6 To the extent that Goods supplied by the Seller are services other than services of a kind ordinarily acquired for personal, domestic or household use or consumption, the Seller's liability for failure to comply with a consumer guarantee that the Buyer may have the benefit of is limited to, at the option of the Seller:

- (a) the supply of such services again; or
- (b) the payment of the cost of having such services supplied again.

9.7 The Buyer may have the benefit of consumer guarantees under Consumer Law. Otherwise, to the maximum extent permitted by law, all terms, conditions or warranties that would be implied into Seller's terms and conditions or in connection with the supply of any Goods by the Seller under law or statute or custom or international convention are excluded.

9.8 The Buyer agrees that the Seller's liability to the Buyer for any claims made in relation to with the Goods, whether under statute, common law (including negligence) or in equity, shall, to the extent permitted by law, be limited to the value of those Goods.

10. **INTELLECTUAL PROPERTY**

10.1 Unless otherwise agreed in writing with the Seller, copyright exists in all documents supplied to the Buyer or produced by the Seller under the Buyer's instructions and is retained by the Seller. The contents of such documents or any part thereof shall not be disseminated in any form to any unauthorised person, institution, organisation or company either directly or indirectly without the prior consent, in writing, of the Seller.

10.2 The intellectual property rights in or relating to the Goods shall remain exclusively the property of the Seller and neither the Buyer nor any agent or subcontractor or any other person authorised by the Buyer shall, at any time, make use of same without prior written authorisation.

10.3 Unless specified otherwise in our quotation, all specifications, drawings and other particulars including weights and dimensions are approximate only. Descriptions and illustrations contained in our catalogues and other illustrated materials are intended only as a conceptual presentation of the equipment or merchandise described therein and none of these shall form part of the Contract.

10.4 All of the Seller's specifications, software, firmware, drawings and technical details submitted with, in support of or in connection with our quotation are our exclusive copyright property and material. All such material, information and application knowledge, whenever supplied, shall at all times be treated by the Buyer or its employees or authorised persons, as confidential and shall not be used, without our consent, for purposes other than the following:

- (a) evaluation of Seller's quotation;
- (b) confirmation of order or contract with the Seller; and
- (c) the operation or application of the equipment or merchandise.

10.5 The designs and features of the Goods offered by the Seller are, in many cases, protected under patents, either existing or pending, and unauthorised reproduction of same constitutes an infringement of the Seller's rights.

11. **INSPECTION, TEST AND CERTIFICATION**

All Goods, as far as practicable, will be subjected to our internal test, quality and inspection procedures. These standard tests, inspections and certifications may be witnessed by the Buyer at no extra charge provided Buyer notifies us of their intent to witness these tests (in our facility) at the time of order placement. A Buyer wishing to avail of this service will be advised of availability of Goods and must attend within 5 working days of such notification failing which the Seller will complete the activity independently and ship the Goods without further notice. Unless specified in our quotation all other tests, inspections and/or certifications are chargeable and must commence within 10 working days of notification of availability of Goods.

12. **COMPLIANCE WITH EXPORT CONTROL REGULATION**

If the Buyer transfers goods (hardware and/ or software and/ or technology as well as corresponding documentation, regardless of the mode of provision) delivered by the Seller or works and services (including all kinds of technical support) performed by the Seller to a third party, the Buyer shall comply with all applicable national and international export / re-export control regulations. In any event of such transfer of goods, works and services, the Buyer shall comply with the export control regulations of the Federal Republic of Germany, of the European Union, of the United States of America and the country of residence.

12.1 Prior to any transfer of goods, works and services provided by the Seller to a third party, the Buyer shall in particular check and guarantee by appropriate measures that:

- (a) There will be no infringement of an embargo imposed by the European Union, by the United States of America and/ or by the United Nations by such transfer, by brokering of contracts concerning those goods, works and services or by provision of other economic resources in connection with those goods, works and services, also considering the limitations of domestic business and prohibitions of by-passing those embargos;
- (b) Such goods, works and services are not intended for use in connection with armaments, nuclear technology or weapons, if and to the extent such use is subject to prohibition or authorization, unless required authorization is provided;
- (c) The regulations of all applicable Sanctioned Party Lists of the European Union and the United States of America concerning the trading with entities, persons and organisations listed therein are considered.

12.2 If required to enable authorities or the Seller to conduct export control checks, the Buyer, upon request by the Seller, shall promptly provide the Seller with all information pertaining to the particular end customer, the particular destination and the particular intended use of Goods

provided by the Seller, as well as any export control restrictions existing.

- 12.3 The Buyer shall indemnify and hold harmless the Seller and its agents from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any non-compliance with export control regulations by the Buyer, and the Buyer shall compensate the Seller for all losses and expenses resulting thereof.

13. **RESERVATION**

The Seller shall not be obligated to fulfill this Contract if such fulfillment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions. It is the Buyer's obligation in such cases to conclusively prove that such supply does not fall within the restrictions of the export /re-export control regulations of sender country.

14. **DISPUTES AND DISPUTE RESOLUTION**

- (a) The parties will use their reasonable best efforts to resolve any dispute or differences ("Dispute") hereunder in good faith negotiations.
- (b) If a Dispute arises, either party may give the other party written notice of the Dispute identifying and providing details of the Dispute. Within 7 days of receipt of a notice under this clause, representatives of the parties (having authority to bind the parties) shall confer to seek to resolve the Dispute. All aspects of such conference(s) shall be subject to "without prejudice" privilege.
- (c) Except where there is no response from the other party to a written notice of Dispute issued in accordance with clause 14(b) above, the parties agree that neither party shall commence any court or arbitration proceedings prior to complying with clauses 14(a) and (b) above.
- (d) The parties agree that if the parties fail to come to an agreement pursuant to clause 14(b) above, then either party may commence proceedings as follows:
- (i) Where the value of the Dispute is above \$5 million or involves an overseas party: the parties agree that the Dispute shall be resolved by arbitration. The Parties agree arbitration shall be in Sydney, Australia and shall be governed by the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The parties agree that the decision of the arbitral tribunal shall be final and binding on both parties.
 - (ii) Where the value of the Dispute is below \$5 million and does not involve an overseas party: the parties agree to submit to the exclusive jurisdiction of the Courts of New South Wales with relevant jurisdiction.

15. **VARIATION TO TERMS AND CONDITIONS OF SALE**

These Terms and Conditions of Sale shall apply to all Contracts between the Seller and the Buyer unless otherwise agreed in writing by an authorised officer of the Seller.

16. **ASSIGNMENT**

The Buyer may not assign any or all of its rights under this Contract without the prior written consent of the Seller.

17. **FORCE MAJEURE**

Neither the Buyer or Seller shall be liable for any failure to perform or delay in performance under this Contract to the extent that any such failure arises from acts of God, war, riots or amended law or policy, strikes, lockouts, labor disruption or any cause beyond the reasonable control of the Buyer or Seller.

18. **GOVERNING LAW**

These Terms and Conditions of Sale shall be governed by the laws of the State of New South Wales, unless otherwise stated. The Buyer and Seller submit to the exclusive jurisdiction of the courts of New South Wales.