

All orders are accepted and sales are made subject only to the Terms and Conditions hereinafter stipulated. The placing of or proceeding in any manner with any order by the Buyer shall be deemed acceptance by the Buyer of such Terms and Conditions.

## **1 GENERAL**

1.1 In these Terms and Conditions, the following definitions shall apply:

- (a) "Agreement" means this agreement, comprising:
  - i. the order (whether written or otherwise); and
  - ii. these Terms and Conditions.
- (b) "Australian Consumer Law" and "ACL" means Schedules 1 and 2 of the Competition and Consumer Act 2010 (Cth) and any other relevant provisions contained in that Act.
- (c) "Buyer" means the person, business or company described (or any person acting on behalf of and with authority of the Buyer) on the order given by the Buyer to the Company in respect of Goods.
- (d) "Company" means Scope Engineering (WA) Pty Ltd ACN 089 555 377 and includes any subsidiary of the Company by which the Goods are sold and successors in title and permitted assigns or any person acting on behalf of and with the authority of the Company.
- (e) "Consumer" means:
  - i. natural person ("Individual") acquiring Goods for personal, domestic or household use or consumption;
  - ii. an Individual or a corporation ("Person") acquiring Goods at a price not exceeding \$40,000; or
  - iii. a Person acquiring Goods of a kind ordinarily acquired for personal, domestic or household use or consumption, but excludes a Person acquiring the Goods, or holding himself or herself out as acquiring the Goods, for the purpose of:
    - iv. resupply; or
    - v. using them up or transforming them, in trade or commerce in the course of a production or manufacture, or in the course of repairing or treating other goods or fixtures on land.
- (f) "Goods" means the subject matter of the Agreement including but not limited to the raw materials, finished or semi-finished materials, or articles, machinery, parts, spares, commodities and any other goods, products, materials or services to be supplied by the Company and whether one or a number of items whether or not identical or similar.
- (g) "GST" has the meaning given to it under A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (h) "Purchase Order Price" means the price set out in the Agreement, which is exclusive of GST.
- (i) "Security Agreement" means the security agreement under the Personal Property Securities Act 2009 (Cth) ("PPSA") created between the Company and the Buyer under the Agreement, and the following words have the meaning given to them by the PPSA:
  - i. "Security Interest";
  - ii. "Purchase Money Security Interest";
  - iii. "Financing Statement";
  - iv. "Financing Change Statement";
  - v. "Proceeds";
  - vi. "Accessions";
  - vii. "Verification Statement"; and
  - viii. "Register".
- (j) "Terms and Conditions of Sale" means these standard terms and conditions of sale.

1.2 The Buyer agrees that these Terms and Conditions are incorporated in any contract made between the Buyer and the Company relative to the goods and services described in the order or other contractual documents annexed thereto.

1.3 In this Agreement measurements of physical quantities are in Australian legal units of measurement within the meaning of the National

Measurement Act 1960 (Cth) and, where any conversion is required from other units to Australian legal units of measurement, the Conversion Factors in schedule 34 of the regulations under that Act must be used or, if those regulations contain no appropriate conversion factor, the conversion factor from Australian Standard AS/NZS 1376-1996 must be used.

## **1 COMPETITION AND CONSUMER ACT 2010 ("CCA")**

1.1 The Buyer expressly acknowledges:

- (a) the Goods are supplied by the Company strictly in the capacity as agent only of the manufacturer of the Goods; and
- (b) all warranties and liabilities in relation to the Goods (if any), whether implied, statutory or otherwise, are provided by, or on behalf of, the manufacturer of the Goods.

1.2 If the Buyer is not a Consumer, then to the extent permitted by law, all conditions, warranties and liabilities, implied, statutory or otherwise not contained in the Agreement ("Company Warranty"), are excluded.

1.3 If the Buyer is not a Consumer, then to the extent permitted by law there shall be no liability to the Buyer for any loss, however caused (including for negligence), suffered or incurred by the Buyer in relation to any defect or deficiency in the Goods (other than as set out in any Company Warranty).

1.4 This clause 1 does not limit liability to a Buyer who is a Consumer.

1.5 If the Buyer is a Consumer, as defined under the ACL, nothing in these Terms and Conditions excludes, restricts or modifies the Buyer's rights or remedies for failure to comply with a guarantee under the ACL, however and subject to section 64A(3) of the ACL, to the extent that the services or Goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the liability for failure to comply with a guarantee under the ACL (other than a guarantee under section 51, 52 or 53 of the ACL) shall be limited to, at the Company's option:

- (a) in the case of Goods, to any one or more of the following:
  - i. the replacement of the Goods (or the supply of equivalent Goods);
  - ii. the repair of the Goods;
  - iii. the payment of the cost of replacing the Goods (or of acquiring equivalent Goods); or
  - iv. the payment of the cost of having the Goods repaired,
- (b) in the case of services, to any one or more of the following:
  - i. to the supplying of the services again; or
  - ii. the payment of the cost of having the services supplied again.

1.6 If the Buyer on-supplies any Goods to a person or entity who is a Consumer, as defined in the ACL:

- (a) if the Goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of the liability to the Buyer;
- (b) otherwise, payment of any amount required under section 274 of the ACL is the absolute limit of liability to the Buyer, howsoever arising under or in connection with the sale, use of, storage or other dealings with the Goods by the Buyer or any other person or entity.

1.7 If clauses 1.5 and 1.6 do not apply, then other than as stated in these Terms and Conditions, there shall be no liability to the Buyer in any way arising under or in connection with the provision of services or Goods to the Buyer or to any other person or entity.

1.8 Nothing in this clause 1 is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of Goods or supply of services which cannot be excluded, restricted or modified.

## **2 ORDERS**

2.1 No order accepted by the Company may be altered without the Company's express written consent.

- 2.2 If the Buyer cancels an order, other than in accordance with these Terms and Conditions, the Buyer shall pay the Company any and all loss, damage and expense incurred by the Company in relation to the Goods and services.
- 3 DESCRIPTION**
- 3.1 Any description of Goods or services is given by way of identification only and use of such description shall not constitute and shall not be construed as constituting a sale by description.
- 4 FITNESS FOR PURPOSE**
- 4.1 Subject to clause 1 hereof, the Buyer acknowledges that neither the Company nor any person acting or purporting to act on its behalf has made representation or given any promise or undertaking which is not expressly set out in writing whether as to the fitness of Goods and services for any particular purpose or any other matter.
- 4.2 Any advice, recommendation, information, assistance or service provided by the Company in relation to Goods sold or manufactured by it or their use or application or the performance of services by the Company is given in good faith and is believed by the Company to be appropriate and reliable. However any advice, recommendation, information, assistance or service provided by the Company in relation to any Goods supplied or services performed respectively is provided without liability or responsibility on the part of the Company.
- 4.3 The Buyer acknowledges and warrants that it has relied on its own skill and judgement or alternatively on the skill and judgement of tradesmen and professional advisers retained by it to provide advice and assistance on the suitability of the Goods for specific purposes and procedures and in this respect shall hold the company harmless and indemnified from and against any suit claim, demand, or compensation which but for these Terms and Conditions the Buyer may have had against the Company.
- 5 QUOTATION AND PRICE**
- 5.1 All prices quoted are in accordance with the Company's price list as printed from time to time and are subject to the conditions stated thereof.
- 5.2 GST and other taxes, levies and duties that may be applicable shall be added to the price except when they are expressly included in the price.
- 5.3 Oral quotations are subject to the price prescribed on the invoice or other contractual documents which shall be the amount payable by the Buyer.
- 5.4 Unless otherwise expressly specified by the Company in writing, the quotation price does not include and the Buyer shall be responsible for all charges in relation to insurance, packing (other than standard packing of the Company), crating, delivery (whether by road, rail, ship or air) and export of the Goods and any sales tax or other government imposts payable in relation to the Goods or services. Any variations in the invoice or contract price as a consequence of currency fluctuations shall be to the Buyers account.
- 5.5 These Terms and Conditions shall not be affected by any impositions or alterations of customs duties or by decisions of the Customs Department as regards either classification or value for duty or landing charges occasioned thereby. Any such impositions or alterations shall be to the account of the Buyer.
- 6 TERMS**
- 6.1 Unless otherwise expressly agreed by the Company in writing, terms of payment for the Goods and services shall be net cash thirty (30) days from the date of invoice.
- 7 TITLE AND RISK**
- 7.1 All risk in the Goods purchased shall unless otherwise expressly agreed in writing by the Company pass to the Buyer upon the earlier of:
- (a) delivery of the goods to the Buyer or his agent or to a carrier commissioned by the Buyer; or
  - (b) collection of the Goods from the Company's premises by the Buyer or his agent, or a carrier commissioned by the Buyer.
- 7.2 On all sales, the Buyer takes all risk during transit, the Company being responsible only for delivery of the goods up to the point of loading.
- 7.3 Title in each unit of the Goods purchased shall pass to the Buyer only upon payment in full of the Purchase Order Price and satisfaction of all other obligations due by the Buyer to the Company.
- 7.4 The Buyer acknowledges that until the Buyer has met and paid all that is owed to the Company, the Buyer holds the Goods as bailee for the Company and that a fiduciary relationship exists between the Buyer and the Company.
- 7.5 Until the Company receives full payment of all monies due to it from the Buyer, the Buyer shall keep the Goods separate and unattached to real property, readily identifiable and traceable, in good condition as a fiduciary of the Company, clearly showing the Company's ownership of the Goods and, shall keep books recording the Company's ownership of the Goods and the Buyer's sales.
- 7.6 If the Buyer defaults any term of the Agreement, the Company may take possession of the Goods wherever the Goods are located and the Buyer agrees that representatives of the Company may ingress and egress the Buyer's premises (without notice as invitee of the Buyer) owned, occupied or used by the Buyer, or any premises where the Goods are situated and take possession of the Goods.
- 7.7 The Buyer covenants with the Company not to charge, pledge, mortgage or otherwise encumber the Goods in any way or grant nor otherwise give any Security Interest in the Goods while they remain the property of the Company.
- 7.8 Each sub-clause of this clause 7 is separate, severable and distinct.
- 7.9 Until the date of payment the Buyer agrees that if it mixes the Goods sold hereunder or if the Goods become constituent of any other object the Company will have proprietary rights, title and interest in the accession, the mixed goods or such other object until the Buyer has paid all that is owing to the Company to the absolute satisfaction of the Company. If the Buyer sells the Goods sold hereunder either individually, subject to accession or mixed or any other object with which the Goods have become constituent the Buyer agrees that it sells such Goods or objects as agent for the Company and remains accountable to the Company until all sums owing to the Company in relation to these Goods have been paid to the absolute satisfaction of the Company. No claim will be recognised by the Company unless made in writing and received by the Company within seven (7) days after receipt of goods by the Buyer. The total amount of any claim shall not exceed the actual invoice or contract value of the Goods claimed to be faulty.
- 8 DELIVERY**
- 8.1 Any times quoted for delivery and installation of Goods and/or the performance of services are estimates only and the Company shall not be responsible nor liable for any loss, damage, claim or demand howsoever arising as a result of or consequent upon any failure to deliver and install Goods or perform services or to any delay in delivery or installation of Goods or performance of services.
- 9 INTELLECTUAL PROPERTY**
- 9.1 The Buyer hereby licenses the use by the Company, where the same is necessary for the performance of the Agreement, of any copyright material, patents, registered designs or trademarks of which the Buyer is the owner or in the case of copyright material, patents, registered designs or trade marks of which the Buyer is a licensee, sub-licenses the Company's use of them as aforesaid.
- 9.2 The Buyer shall hold the Company harmless from, and indemnify the Company, against any infringement of any copyright, patent, registered design or trade mark with respect to any copyright patent, registered design or trade mark furnished to the Company by the Buyer.

9.3 The sale to and purchase by the Buyer of any Goods does not confer on the Buyer the license or right under any copyright patent, registered design, or trademark which is the property of the Company.

## **10 LICENSES**

10.1 All Goods are sold and services performed by the Company on the basis that all licenses and permits under all relevant statutes, ordinances, rules and regulations have been obtained by or complied with by the Buyer and the Buyer shall hold the Company indemnified from and against any action, claim, demand suit or proceeding by any relevant authority with respect to the performance of the services or installation and/or use of any Goods sold insofar as the Goods are to be installed and used by the Buyer.

## **11 DEFAULT**

11.1 The Buyer will be in default if:

- (a) it breaches any term of the Agreement; or
- (b) payment for the Goods has not been received by the Company by the due date of payment; or
- (c) the Buyer being an individual commits an act of bankruptcy or becomes an insolvent under administration; or
- (d) the Buyer being a body corporate becomes an externally-administered body corporate or has an application for winding up filed against it, or has a receiver or receiver and manager appointed in respect of it or its assets; or
- (e) the Company forms the opinion that the Buyer's credit worthiness or credit standing is unsatisfactory to the Company in its reasonable discretion.

11.2 If one of the events described in clause 11.1 occurs, the Company may without prejudice to any other rights and without notice to the Buyer do any one or more of the following:

- (a) treat the whole of the Contract and any other Contract with the Buyer as repudiated and sue for breach of contract;
- (b) refuse to supply any Goods to the Buyer;
- (c) claim the return of any Goods in the Buyer's possession, power, authority, custody or control;
- (d) withdraw or vary any credit the Company has provided to the Buyer; or
- (e) make all monies owing by the Buyer to the Company on any account immediately due and payable, in addition to all other costs incurred by the Company in connection with the default.

11.3 In addition to any lien which the Company may by statute or otherwise be entitled, the Company shall, in the event of the Buyers insolvency, bankruptcy or winding up, be entitled to a general lien on all property or goods belonging to the Buyer in the Company's possession (although such goods or some of them have been paid for), for the unpaid price of any other Goods sold and delivered to the Buyer under this or any other contract.

## **12 FORCE MAJEURE**

12.1 Should the Company's performance hereunder be affected by war, terrorism, riot, flood, subsidence, inundation, storm, fire, lightning, tempest, strike, lock-out, industrial action, labour dispute action or shortage, raw material shortage, breakdown of plant, transport or equipment, restrictions of Government or other statutory authorities, epidemics, failure or fluctuation in any electrical power supply, earthquake, accident, the change or introduction of any law or regulation or an act or omission of a supplier to the Company, act of god, other force majeure event or similar disturbance the Company may, at its absolute discretion, terminate the Agreement.

12.2 The Company shall not be liable for any costs incurred by the Buyer as a result of termination of the Agreement in accordance with clause 12.1.

## **13 WAIVER**

13.1 Any failure by the Company to insist upon strict performance of any Terms or Conditions herein shall not be deemed a waiver thereof of any right that the Company may have and shall not be deemed a waiver of any subsequent breach of any term or condition.

## **14 RETURN OF GOODS**

14.1 Subject to clause 1, Goods will not be accepted for return for reasons other than defects without the prior agreement of the Company.

## **15 SUB-CONTRACTING**

15.1 The Company reserves the right to sub-contract the manufacture and/or supply of the Goods or any part thereof of any materials or services to be supplied.

## **16 PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA")**

16.1 The Buyer acknowledges and agrees that this Agreement (including the credit application form):

- (a) constitutes a Security Agreement for the purposes of the PPSA; and
- (b) creates a Security Interest in all Goods (including but not limited to all Accessions and serial numbered goods) and their Proceeds to secure the obligations of the Buyer to the Company under this Agreement.

16.2 The Buyer irrevocably consents to the Company at any time affecting and maintaining a registration on the Register (in any manner the Company considers appropriate) in relation to any Security Interest (including any Purchase Money Security Interest) contemplated or constituted by this Agreement in the Goods, any Accession and the Proceeds.

16.3 The Buyer undertakes to:

- (a) promptly and at its own expense do all things and sign any further documents and/or provide any further assistance and/or provide any further relevant information (such information to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to:
  - i. obtain and/or register and/or maintain and/or perfect a Financing Statement or Financing Change Statement in relation to a Security Interest on the Personal Property Securities Register and/or enforce the Company's Security Interest in respect of the Goods supplied in accordance with the PPSA;
  - ii. register any other document required to be registered by the PPSA; or
  - iii. correct a defect in a statement referred to in clause 1.4.1(a) or 1.4.1(b).
- (b) indemnify, and upon demand reimburse, the Company for all expenses howsoever incurred in registering a Financing Statement or Financing Change Statement on the Register or releasing any Goods charged;
- (c) not register, procure or permit to be registered a Financing Statement or Financing Change Statement in respect of a Security Interest contemplated or constituted by this Agreement without the express prior written consent of the Company (which consent may be withheld for any reason in the Company's absolute discretion);
- (d) not register, procure or permit to be registered a Financing Statement or Financing Change Statement in respect of the Goods or a Security Interest in favour of a third party without the express prior written consent of the Company (which consent may be withheld for any reason in the Company's absolute discretion);
- (e) not to change its name and or its details (including, but not limited to, changes in the Supplier's registered office address, facsimile number, trading name or business practice) without first notifying the Company of the new name or change in details not less than 14 days before the change takes effect; and
- (f) immediately advise the Company of any material change in its business practices which would result in a change in the nature of the Proceeds of the Goods.

16.4 The Company and the Buyer agree to contract-out of the PPSA in accordance with section 115 to the extent that section 115 applies for the benefit of, and does not impose a burden on the Company.

- 16.5 The Buyer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 16.6 To the fullest extent permissible by law the Buyer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 16.7 The Buyer warrants that the Goods are of a commercial nature and are not purchased for use primarily for personal, domestic or household purposes.
- 16.8 Unless otherwise expressly agreed to in writing by the Company, the Buyer waives its right to receive a Verification Statement in accordance with section 157(3)(b) of the PPSA.
- 16.9 Unless otherwise expressly agreed to in writing by the Company, the Buyer must not disclose any information of the kind referred to in section 275(1) of the PPSA to an interested person, or any other person required by an interested person.
- 16.10 The Buyer shall not sell or grant a Security Interest in the Goods without the Company's express prior written consent.
- 16.11 The Buyer shall unconditionally ratify any actions taken by the Company under this clause 16.

## **17 CREDIT**

- 17.1 The Company may grant the Buyer credit in its absolute discretion.
- 17.2 Until the Company grants the Buyer credit by express notice in writing, the Company will only supply Goods to the Buyer on the basis of cash on delivery.
- 17.3 The granting of credit does not oblige the Company to extend any particular amount of credit to the Buyer.
- 17.4 The Buyer must immediately notify the Company in writing if there is any change in the Control (as defined by Section 50AA of the Corporations Act 2001), shareholding or ownership of the Buyer or any material change in the Buyer's financial position.

## **18 ASSIGNMENT**

- 18.1 None of the rights or obligations of the Buyer under the contract may be novated, assigned or transferred in whole or in part without the prior express written consent of the Company.

## **19 APPLICABLE LAW**

- 19.1 The Agreement (and any proceedings whereby one party might be entitled to join the other as a third party) shall in all respects be governed by and construed in accordance with Western Australian law and the parties hereby submit to the non-exclusive jurisdiction of the Western Australian courts.

## **20 INSURANCE**

- 20.1 Unless otherwise agreed to by the Company, the Buyer is responsible for insuring the Goods ex the Company's works.

## **21 VIENNA SALES CONVENTION**

- 21.1 To the fullest extent permitted by law, the United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980) known as the Vienna Sales Convention does not apply to the Agreement, nor do any of the terms and conditions express or implied by the Vienna Sales Convention form part of the Agreement.

## **22 ENTIRE AGREEMENT**

- 22.1 The Agreement represents the entire agreement between the Company and the Buyer with respect to the sale of Goods supplied or the performance of services produced. The Agreement may not be varied, modified, amended or altered without the express written consent of the Company.

- 22.2 The Buyer hereby acknowledges that any terms and conditions attached to any order made by the Buyer shall not form part of the Agreement, and such order shall be deemed to be an acceptance of these Terms and Conditions and shall not constitute a counter-offer to the Company.

- 22.3 These Terms and Conditions apply to all future contracts entered into between the Company and the Buyer unless otherwise agreed to by the Buyer in writing.

## **23 LIMITATION OF LIABILITY**

- 23.1 Subject to clause 1.1, the Company shall not be liable to the Buyer its servants or agents or contractors for any direct, indirect, incidental, consequential or reasonably foreseeable losses, expenses or damages of any nature howsoever caused (whether based on tort or contract or otherwise) suffered by the Buyer or any other persons or entity howsoever caused including but not limited to loss of turnover, loss of profits, loss of production, loss of sales opportunity or business reputation or goodwill, direct or indirect labour costs and overhead expenses and damage to equipment or property, or any liability to any other person or entity or any other claim whatsoever arising directly or indirectly out of or in any way attributable to the sale of goods or performance of services, except to the extent of any liability imposed by the ACL.

- 23.2 Notwithstanding any other provision of these Standard Terms and Conditions of Purchase but subject to clause 23.3, and to the maximum extent permitted by law, the Company's overall liability:
- (a) under, or arising out of, or in connection with these Standard Terms and Conditions of Purchase; or
  - (b) otherwise at law or in equity, including by statute, in tort for negligence or otherwise; or on any other basis whatsoever,
- shall not exceed ten per cent (10%) of the Purchase Order Price.

- 23.3 The limitation of liability referred to in clause 23.2 does not apply to liability for direct loss arising from liability which, by law, the Company cannot contract out of.

## **24 ENFORCEABILITY**

- 24.1 If a provisions of these Terms and Conditions can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any provision or part of these Terms and Conditions is illegal, unenforceable or invalid, that provision or part is to be treated as removed from this document, but the rest of this document is not affected.

## **Acknowledgement and Acceptance**

The Buyer hereby acknowledges and accepts the Terms and Conditions when placing of or proceeding in any manner with any order.