

1. DEFINITIONS

In these terms and conditions, the following words shall have the following meanings:

"Affiliates" means as the context shall require the principal or associated or subsidiary companies from time to time of the Company or the Buyer;
 "Australian Consumer Law" means Schedule 2 to the Competition and Consumer Act 2010;
 "Business Day" means any day other than a Saturday, Sunday or public holiday in the state of New South Wales, Australia
 "Buyer" means the corporate entity firm or person referred to in the Company's quotation and/or acknowledgement of order who purchases the Goods and/or Services from the Company;
 "Company" means Vesuvius Australia Pty Ltd (ACN 003 691 245) of 40-46 Gloucester Boulevard, Port Kembla, NSW 2505, Australia;
 "Conditions" means these terms and conditions and any special terms and conditions agreed in writing between the Company and the Buyer;
 "Contract" means any contract between the Company and the Buyer for the sale of Goods and/or provision of Services, incorporating the Quotation (once accepted) and these Conditions;
 "Goods" means the goods, products, articles or things (including any part or parts of them) to be supplied under or in relation to the Contract (including without charge);
 "GST" means A New Tax System (Goods and Services Tax) Act (Cth) 1999;
 "Personnel" means the employees, servants, directors, agents, consultants or other personnel of the Company, its Affiliates or any of their subcontractors;
 "PPSA" means Personal Property Securities Act (Cth) 2009, as amended or replaced;
 "PPSR" means Personal Property Securities Register constituted under the PPSA; and
 "Quotation" means the quotation or proposal issued by the Company in respect of the Goods or Services.
 "Services" means the services to be supplied under or in relation to the Contract (including without charge).

2. MAKING THE CONTRACT

2.1 The Company's salesmen are not authorised representatives and are not authorised to accept, confirm or vary any order nor to make any representation or promise on the Company's behalf.
 2.2 The Quotation which comprises an estimate and is not binding on the Company is open for a period of 60 (sixty) days only from the date thereof (or such other period specified in the quotation), provided that the Company has not previously withdrawn it.
 2.3 Any order issued by the Buyer is subject to acceptance by the Company and the Contract will only be formed when the Company has accepted the Buyer's offer to buy in writing. In the event that the Company has not given a written order acknowledgement of the Buyer's offer these terms and conditions, provided the Buyer shall have had prior notice of them, shall nonetheless apply to the Contract.
 2.4 Any order made by the Buyer orally must be confirmed in writing.
 2.5 All orders are placed under these terms and conditions alone.
 2.6 These terms and conditions exclude any other terms and conditions inconsistent therewith which a Buyer contained in any offer, acceptance or counter-offer made by the Buyer.
 2.7 No variation of these terms and conditions is permitted unless expressly accepted by an authorised representative of the Company in writing.
 2.8 The Company and its Affiliates may, at any time, unilaterally vary these Conditions for future orders by giving notice to the Buyer. Notice may be given by email or otherwise in writing or by notice posted on the Company's website. The Company will not change any terms for an existing order that has been accepted by it without the consent of the Buyer (acting reasonably).

3. CANCELLATION

No cancellation by the Buyer is permitted except where expressly agreed by an authorised representative of the Company in writing and signed by them and then only on terms stipulated by the Company in writing.

4. PRICE

4.1 All prices specified are those ruling at the date of the quotation.
 4.2 Unless otherwise stated all prices quoted are in Australian Dollars, exclusive of GST, and given on the basis that the Goods shall be delivered Ex-Works (premises nominated by the Company) (Incoterms 2010) and unless otherwise stated in the Contract the Buyer shall be liable in addition to paying GST, to pay all applicable duties, sales, taxes and the Company's charges for transport, loading, packaging and insurance.
 4.3 The Company reserves the right at any time, by notifying the Buyer by writing (including email), to adjust the price to take account of any increase in the cost of raw materials, labour services or any currency fluctuations affecting the cost of imported materials and for any other reason including to correct errors or omissions without any liability on the part of the Company.
 4.4 Upon receipt of a tax invoice for monies due under this Contract, the Buyer must pay to that party an additional amount on account of GST equal to the amount payable for the relevant supply multiplied by the prevailing GST rate.
 4.5

5. TERMS OF PAYMENT

5.1 All preliminary work (including the costs of acquiring or preparing appropriate tools where necessary) done by the Company at the request of the Buyer in relation to the Contract or the Goods and/or Services or materials used in conjunction therewith shall be paid for by the Buyer upon demand by the Company.
 5.2 Subject to Condition 5.1 above all sums become due and payable under these terms and conditions not later than the end of the month following the month in which the Goods were despatched or made available for collection and/or the Services were supplied (or would have been supplied but for the Buyer's failure to fulfil its obligations under the Contract) unless otherwise specified in writing.
 5.3 Time for payment shall be of the essence.
 5.4 Notwithstanding any other provision all payments payable to the Company under the Contract shall become due immediately upon termination of the Contract for whatever reason.
 5.5 The Company reserves the right to charge interest at 4% (four percent) per annum above the HSBC PLC Base Lending Rate on all overdue accounts, such interest being deemed to accrue on a day to day basis from the due date for payment under Conditions 5.1, 5.2 and 5.4.
 5.6 The Buyer shall have no right of set off, statutory or otherwise and is not entitled to withhold any payment by way of retention unless the terms of such retention are agreed in writing and signed by an authorised representative of the Company. The Company may set off any claim of any kind whatsoever which the Buyer (or its Affiliates) may have against the Company (or its Affiliates) under the Contract or any other contract or otherwise howsoever against any sum which would otherwise be due from the Buyer (or its Affiliates) to the Company (or its Affiliates) under the Contract or any other contract or otherwise howsoever.
 5.7 The Company reserves the right, where in its opinion doubts arise as to a Buyer's financial position or in the case of failure to pay for any preliminary work any Goods and/or Services or any delivery or instalment as aforesaid, or the Buyer refuses to accept delivery of Goods or performance of Services to suspend or cancel delivery or performance of any order or any part or instalment without liability until payment or security for payment has been provided to the Company's satisfaction.
 5.8 All payments shall be in Australian Dollar unless stated otherwise in the Contract.

6. TERMINATION

6.1 Without prejudice to any rights that have accrued under the Contract or any other rights or remedies, the Company may (notwithstanding any previous agreement or arrangement to the contrary) immediately suspend performance of the Contract, cancel any outstanding delivery of the Goods and/or supply of the Services, stop any Goods in transit or by notice in writing to the Buyer terminate the Contract without liability to the Company if:
 6.1.1 the Buyer fails to pay any sum payable under the Contract, or any other agreement between the Buyer and the Company or any Affiliate of the Company within 7 days of its due date; or
 6.1.2 the Buyer commits a material breach of any of its obligations under the Contract which is incapable of remedy; or
 6.1.3 the Buyer commits a material breach of its obligations under the Contract which is capable of remedy and fails to remedy it or persists in such breach after 30 days of having been required in writing to remedy or desist; or
 6.1.4 the Buyer suspends, or threatens to suspend, payment of its debts (whether principal or interest) or is deemed to be unable to pay its debts; or
 6.1.5 the Buyer calls a meeting, gives a notice, passes a resolution or files a petition, or an order is made, in connection with the winding up of that party (save for the sole purpose of a solvent voluntary reconstruction or amalgamation); or
 6.1.6 the Buyer has an application to appoint an administrator made or a notice of intention to appoint an administrator files or an administrator is appointed in respect of it all or any part of its assets; or
 6.1.7 the Buyer has a receiver or administrative receiver appointed over all or any part of its assets or a person becomes entitled to appoint a receiver or administrative receiver over such asset; or
 6.1.8 the Buyer takes any steps in connection with proposing a company voluntary arrangement or a company voluntary arrangement is passed in relation to it, or it commences negotiations with all or any of its creditors with a view to rescheduling any of its debts; or
 6.1.9 the Buyer has any steps taken by a secured lender to obtain possession of the property on which it has security or otherwise to enforce its security; or
 6.1.10 the Buyer has any distress, execution or sequestration or other such process levied or enforced on any of its assets; or
 6.1.11 the financial position of the Buyer has become impaired in the opinion of the Company; or
 6.1.12 the Buyer has any proceeding taken, with respect to it in any jurisdiction to which it is subject, or any event happens in such jurisdiction that has an effect equivalent or similar to any of the events in this Condition 6.1.

7. DELIVERY AND RISK

7.1 Unless stated otherwise in the Contract the Goods shall be delivered Ex-Works (Premises nominated by the Company) (Incoterms 2010) and the Buyer shall take delivery at the Seller's nominated premises within 14 days of being notified that such Goods are ready.
 7.2 If the Contract states that delivery is to be in accordance with a term defined by Incoterms then Incoterms 2010 shall apply, and where there is any conflict or ambiguity between these Conditions and that delivery term, that delivery term shall apply.
 7.3 Risk shall pass on delivery to the Buyer (notwithstanding delivery of the Goods may be before commencement or completion of the Services), or to a roadside adjacent to the delivery site or to a carrier nominated by the Buyer.
 7.4 The Company shall be under no obligation to give the Buyer any notices
 7.5 Any dates specified by the Company for delivery of the Goods are intended to be an estimate only and time for delivery by the Company is not of the essence.
 7.6 The Company shall not be liable for any loss whatsoever or howsoever arising caused by its non-delivery or by the failure to make Goods ready for collection on the due date.
 7.7 The Company reserves the right to make delivery by instalments and to tender a separate invoice in respect of each instalment.
 7.8 When delivery is to be made by instalments or the Company exercises its right to deliver by instalments under Condition 7.7 hereof or if there be delay in the delivery of any one or more instalments for whatever reason this will not entitle the Buyer to terminate the Contract as repudiated or to claim damages.
 7.9 Deviations in quantity of the Goods declared from that stated in the Contract shall not give the Buyer any right to reject the Goods or to claim damages and the Buyer shall be obliged to accept and pay at the Contract rate for the quantity of the Goods delivered.
 7.10 If for any reason the Buyer does not accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations then upon notice to the Buyer the Goods will be deemed to have been delivered, risk passing to the Buyer (including for loss or damage caused by the Company's negligence) and the Company may:
 (a) store the Goods until actual delivery whereupon the Buyer will be liable for all related costs and expenses (including without limitation storage and insurance); or
 (b) sell the Goods at the best price readily obtainable and (after deduction of all reasonable storage and selling expenses) charge the Buyer for any shortfall below the Contract price.

8. RETENTION OF TITLE

8.1 Full legal, beneficial and equitable ownership of Goods shall remain with the Company until payment in full has been received by the Company:
 8.1.1 for those Goods;
 8.1.2 for any other Goods supplied by the Company;
 8.1.3 of any other monies due from the Buyer to the Company on any account;
 8.1.4 of any other monies due from the Buyer to any Affiliate of the Company on any account.
 8.2 Until full legal, beneficial and equitable title to and property in the Goods passes to the Buyer under Condition 8.1:
 8.2.1 the Buyer shall hold the Goods on a fiduciary basis as the Company's bailee;
 8.2.2 the Buyer shall store the Goods at its premises in a proper manner in conditions which adequately protect and preserve the Goods;
 8.2.3 the Buyer shall insure the Goods without any charge to the Company;
 8.2.4 the Buyer shall not tamper with any identification upon the Goods or their packaging;
 8.2.5 the Buyer shall keep the Goods separately and readily identifiable as the property of the Company; and
 8.2.6 the Company shall be entitled to examine any such Goods in storage at any time during normal business hours upon giving the Buyer reasonable notice of its intention to do so.
 8.3

8.3.1 Notwithstanding Conditions 8.1 and 8.2 the Buyer may (as between it and its buyer only) as principal in the ordinary course of its business sell the Goods by bona fide sale at full market value or in the ordinary course of business use the Goods unless the Company notifies the Buyer otherwise in writing;
 8.3.2 Goods shall be deemed sold or used in the order delivered to the Buyer;
 8.3.3 any resale by the Buyer of Goods in which property has not passed to the Buyer shall (as between the Company and the Buyer) be made by the Buyer as agent for the Company and the Buyer shall upon receipt of the proceeds of such sale remit the full purchase price of the Goods to the Company less any part paid and until such amount has been paid shall hold the proceeds as trustee and agent for the Company.
 8.4 Any time prior to title in Goods passing to the Buyer (whether or not all payment to the Company is then overdue or the Buyer is otherwise in breach of any obligation to the Company) the Company may (without prejudice to any other of its rights):
 8.4.1 retake possession of all or any part of the Goods and the Buyer hereby grants the Company an irrevocable licence to enter any premises for that purpose (and to authorise others to do so on its behalf);
 8.4.2 require the immediate delivery up to it of all or any part of the Goods;
 8.4.3 terminate the Buyer's authority to resell the Goods immediately by written notice to the Buyer which authority shall automatically terminate (without notice) upon any insolvency of the Buyer or it having a receiver or administrative receiver or liquidator over the whole or any part of its assets or calling a meeting of its creditors or any execution or distress being levied on the Goods or any other assets in its possession.
 8.5 The Buyer will be responsible for the Company's costs and expenses in exercising its rights under clause 8.4 and such costs will be a debt due and payable.
 8.6 For the avoidance of doubt, this agreement constitutes a security agreement for the purposes of the PPSA and the Company's interest constitutes a security interest under the PPSA
 8.7 The Buyer must promptly sign any further documents and provide any further information (complete, accurate and up to date in all respects) which the Company may reasonably require to:
 8.7.1 register a financing statement or financing change statement in relation to a security interest on the PPSR;
 8.7.2 register any other document required to be registered by the PPSA; or
 8.7.3 correct a defect in a statement referred to in 8.7.1 or 8.7.2.
 8.8 The Buyer waives its rights it would otherwise have under the PPSA:
 8.8.1 to receive notices under sections 95 (intention to remove accession), 118 (enforcement under land law), 121(4) (enforcement action against liquid assets), 130 (disposal of Goods), 132(2) (statement of account following disposal), 132(4) (statement of account if no disposal of Goods), 135 (proposal to retain Goods) of the PPSA;
 8.8.2 as a grantor and/or debtor under 137(2) (to object to proposal of the Company to retain Goods), 142 (to redeem Goods) and 143 (reinstate security agreement) of the PPSA; and
 8.8.3 to receive a verification statement under section 157(1) and 157(3) of the PPSA.
 8.9 The parties agree that sections 125 and 132(3)(d) of the PPSA do not apply to the Contract.
 8.10 The Company may at any time appropriate sums received from the Buyer as it thinks notwithstanding any purported appropriation by the Buyer.
 8.11 Each clause and sub-clause of this Condition 8 is separate severable and distinct and, accordingly, in the event of any of them being for any reason whatever unenforceable according to its terms, the others shall remain in full force and effect.
 8.12 All drawings, designs, samples, tools, moulds and other equipment made, prepared or obtained by the Company (and all intellectual property rights in them or in the Goods or Services) shall be and remain the exclusive property of the Company whether or not a charge is made to the Buyer in respect thereof.
 8.13 The Buyer shall maintain all appropriate insurance in respect of the Goods from the date or dates on which the risk therein passes to it as defined above. In the event of any loss or damage occurring while the Goods remain the property of the Company the Buyer shall immediately on receipt of the insurance monies, remit to the Company the full purchase price of the Goods lost or damaged less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent for the Company.

9. SUPPLY OF SERVICES

9.1 The Company shall provide the Services to the Buyer in accordance with the Contract.
 9.2 The Company shall use its reasonable endeavours to meet any performance dates for the Services, but any such dates shall be estimates only and time shall not be of the essence for the performance of Services. To the maximum extent permitted by law, the Company shall not be liable for any loss whatsoever or howsoever arising caused by its failure to provide the Services on the due date.
 9.3 Where the Company is to perform the Services at the Buyer's premises, the Buyer shall:
 (i) ensure safe and unhindered access to the premises for all the Personnel to carry out work at all relevant times;
 (ii) ensure that all consents, permissions, or licences required in order to allow the Services to be provided are in place;
 (iii) ensure the provision of adequate power, lighting, heating, water, compressed air and steam and other such facilities or supplies required for the provision of Services;
 (iv) provide, adjacent to where the Services are to be provided, storage for the materials required for the Services and associated equipment acceptable to the Company under cover and protected from damage by frost, water, and other physical or natural conditions;
 (v) provide adjacent to where the Services are to be provided ample working area adjacent to the installation site;
 (vi) provide a crane service and/or lift truck to unload the Goods and associated equipment and to handle the same to an area acceptable to the Company within 50 feet of the installation site;

- (vii) provide adequate physical protection against theft, loss or damage to the materials and equipment required for the Services;
- (viii) ensure that the site where Services are to be provided is adequate for that purpose, clear and free of all health and safety hazards and possesses such facilities for the Personnel to comply with any applicable legislation and as the Company shall reasonably require;
- (ix) be responsible for the Personnel's death or personal injury or damage to or loss of the Company's (and its Affiliates', subcontractors' and Personnel's) property whilst on the Buyer's premises except to the extent any such death or personal injury results from the negligence of the Company or its Affiliates or its subcontractors;
- (x) where the Services include the removal of a section of any installation the Company will endeavour to prevent the collapse of or damage to any part or parts of the section removed or of the remaining installation, but such removal will be at the Buyer's risk and the Company will not accept responsibility for any loss or damage (and therefore excludes all liability) resulting directly or indirectly from any such removal or collapse.
- 9.4 To the maximum extent permitted by law, the Company shall have no liability where Services are undertaken on plant or machinery, and that plant or machinery is used for purposes of which the Company has not been given reasonable advance written notice and expressly accepted by the Company in writing.
- 9.5 The Services will be deemed to be completed and the relevant element of the Contract price to be due and payable immediately:
- (a) when the Company issues a written notice to the Buyer confirming such completion; or
- (b) if the Company is available to perform the Services but is prevented from doing so by reason of:
- (i) the lack of relevant assistance from the Buyer (such as lack of availability of test components or parts from the Buyer)
- (ii) the condition of the Buyer's premises on the site at which the Services are to be provided and/or the facilities at or the services available at those premises at the time agreed for the provision of the Services; or
- (iii) the failure by the Buyer to comply with the Contract.

10. COMPANY MATERIALS

- 10.1 Where the Company issues materials (whether for a charge or free of charge) to the Buyer for use in connection with the Contract (including without limitation equipment required for the preparation, storage, delivery, installation or use of, or for the Goods and/or Services) ("Company Materials"), such materials shall be and remain the property of the Company.
- 10.2 The Buyer shall maintain the Company Materials in good order and condition and at its risk, subject to fair wear and tear, and shall use them only in connection with the Contract, in accordance with the Company's recommendations and instructions and as expressly authorised.
- 10.3 The Buyer shall indemnify the Company and its Affiliates against all losses, costs, damages, expenses and claims in respect of the Company Materials whilst they are in the Buyer's possession except to the extent any of the same relate to death or personal injury resulting from the negligence of the Company or its Affiliates or its subcontractors.
- 10.4 The Buyer shall at any time immediately upon the Company's request cease to use the Company Materials and deliver up to the Company all Company Materials and for the avoidance of doubt, the Buyer shall have any right of lien over the Company Materials. The Company is entitled to retake possession of the Company Materials at any time and without notice and the Buyer hereby grants the Company an irrevocable licence to enter any premises for that purpose (and to authorise others to do so on its behalf).
- 10.5 On termination of the Contract or any part of it for any reason, the Buyer shall return all Company Materials within 7 days. If the Buyer fails to do so, then the Company may without limiting its other rights or remedies enter the Buyer's premises and take possession of them. Until the Company Materials have been returned or delivered, the Buyer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

11. INSPECTION/SHORTAGES

- 11.1 The Buyer will be deemed to have accepted the Goods as being in accordance with the Contract unless:
- (a) within seven days after the Buyer has taken delivery or collected the Goods as the case may be (but in any event prior to any use or modification of the Goods), the Buyer has notified the Company in writing of any defect or other failure of the Goods to conform with the Contract (which would be apparent upon reasonable inspection and testing of the Goods within seven days); or
- (b) the Buyer notifies the Company in writing of any defect or other failure of the Goods to conform with the Contract within a reasonable time where the effect or failure would not be so apparent within seven days of the date of delivery or collection, failing which the Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 11.2 To the maximum extent permitted by law, in all cases where defects or shortages are complained of the Company shall be under no liability in respect thereof unless an opportunity to inspect the Goods is afforded to the Company (including when relevant by the Goods being returned to the Company at the Buyer's cost) before any use is made thereof or any alteration or modification is made thereto by the Buyer.
- 11.3 To the maximum extent permitted by law, the Company shall only be liable for any non-delivery of Goods (even if caused by the Company's negligence) if the Buyer gives written notice to the Company within seven days of the date when the Goods would, in the ordinary course of events have been delivered.
- 11.4 If the Buyer gives notice to the Company in accordance with Condition 11.3, to the maximum extent permitted by law the liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

12. WARRANTY

- 12.1 To the maximum extent permitted by law, all terms, conditions, guarantees or warranties that would have been implied into this agreement or in connection with the supply of Goods and/or Services by the Company under legislation or custom are excluded.
- 12.2 Nothing in this agreement shall be read or applied to as to purport to exclude, restrict or modify or have the effect of restricting, excluding or modifying the application in relation to the supply of any goods or services under this agreement of any provision of the Competition and Consumer Act (Ch) 2010 to any applicable legislation which cannot be excluded, restricted or modified.
- 12.3 Pursuant to section 564A and 276A of the Australian Consumer Law, clause 12.4 applies in respect of any of the Goods and Services supplied under this Contract which are not of a kind ordinarily acquired for personal, domestic or household use or consumption.
- 12.4 The Company's liability in respect of breaches of express or implied terms and conditions, warranties and guarantees (other than the guarantees under section 51 (title), section 52 (undisturbed possession) and section 53 (undisclosed securities) of the Australia Consumer Law is limited to:
- 12.4.1 where the Buyer is a consumer (as defined in the Australian Consumer Law) and the Company has supplied goods to the Buyer, any one of the following as determined by the Company: the replacement of the Goods or the supply of equivalent goods; the repair of the Goods; the payment of the cost of replacing the Goods or of acquiring equivalent goods; or the payment of the cost of having the Good repaired; or
- 12.4.2 where the Buyer has supplied Goods to a consumer, an amount equal to the lowest of the costs of the actions in paragraph 12.4.1;
- 12.4.3 where the Buyer is a consumer and the Company has supplied Services to the Buyer, either of the following as determined by the Company: the supply of the Services again or the cost of having the Services supplied again.
- 12.5 The limitations of the Company's liability in respect of breaches of express or implied terms or conditions and warranties and guarantees as expressed in this clause will be varied to the extent required to limit the Company's liability to the extent permitted by relevant state and territory legislation covering sale of goods and consumer protection.
- 12.6 Where the Buyer is not a consumer and has not supplied the Goods to a consumer, the Company's total aggregate liability in respect of breaches of express or implied terms and conditions, warranties and guarantees is limited to the GST exclusive aggregate price paid by the Applicant for the specific Goods and/or Services that gave rise to the Buyer's claim for breach.
- 12.7 The Supplier will not be liable for any damages arising out of or in connection with loss of revenue, loss of profits, loss of anticipated savings or business, loss of opportunity or loss of reputation, special, consequential or indirect loss, damage, cost, expense, harm or injury suffered or incurred as a result of such breach unless such liability is mandatorily imposed on the Supplier by statute, notably the Australian Consumer Law.
- 12.8 To the maximum extent permitted by law, the Company shall be under no liability under Condition 12.1 unless the Buyer:
- 12.8.1 notifies the Company in writing of the alleged defect within seven days of the time when the Buyer discovers or ought to have discovered the defect; and
- 12.8.2 affords the Company a reasonable opportunity to inspect the relevant Goods or location at which the Services were performed and, if so requested by the Company and where it is reasonable to do so, promptly returns to the Company or such other person nominated by the Company a sample of the Goods or materials relating to the Services within fourteen days, carriage paid by the Buyer, for inspection, examination and testing and otherwise permits the Company to have access to the Goods or such materials at the Buyer's premises or other location where they may be or the Services were performed for such purposes.
- 12.9 If the Company elects to replace the Goods or reperform the Services pursuant to Condition 12.1 the Company shall deliver the replacement Goods to or reperform the Services for the Buyer at the Buyer's own expense at the address to which the defective Goods were delivered or defective Services performed and the legal, equitable and beneficial title to the defective Goods which are being replaced shall (if it has vested in the Buyer) re-vest in the Company and the Buyer shall make any arrangements as may be necessary to deliver up to the Company the defective Goods which are being replaced or materials relating to the previously performed Services.
- 12.10 To the maximum extent permitted by law, the Company shall be under no liability
- 12.10.1 in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal storage or working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of Goods without the Company's approval;
- 12.10.2 if the total price due for the Goods or Services has not been paid;
- 12.10.3 for parts, materials or equipment not manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company and which the Company is able to validly enforce against any such manufacturer;

- 12.10.4 for any Goods or Services supplied in accordance with, or where the defect has arisen due to any drawing, design, specification, instruction, information or recommendation provided by the Buyer; or
- 12.10.5 for any Goods or Services supplied where the defect has arisen because the Buyer has failed to provide information, which if provided would have allowed the Company to ensure the Goods or Services would not have been defective.
- 12.11 The Company shall have the right to make any changes to the Goods or Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Goods or Services.

13. LIMITATION OF LIABILITY

- 13.1 The Company does not in any manner whatsoever exclude or limit its liability for death or personal injury resulting from its negligence, fraud or fraudulent misrepresentation or any liability which cannot legally be excluded or limited.
- 13.2 To the maximum extent permitted by law, the Buyer accepts that the provisions of Conditions 11, 12 and 13 set out the entire liability of the Company to the Buyer and the exclusive remedies of the Buyer against the Company under or in relation to the Contract. Accordingly, save as set out below, the Company shall have no liability of any nature whatsoever for (without limitation) any breach of its contractual obligations arising under the Contract, any representation (unless fraudulent), statement or tortious act or omission, including negligence and breach of statutory duty, arising under or in connection with the Contract or in relation to other matter or thing whatsoever under or in relation to the Contract.
- 13.3 The Company shall not be liable for any economic loss of whatever nature (direct or indirect) including without limitation loss of anticipated profits, loss of actual profits (direct or indirect), loss of anticipated savings, loss of business howsoever arising.
- 13.4 The Company shall not be liable for any indirect, special or consequential loss or damage howsoever arising.
- 13.5 If the Company fails to deliver the Goods (or any instalment) in accordance with its obligations under the Contract for any reason other than as set out in Condition 14 or the Buyer's default, and the Company is accordingly liable to the Buyer, to the maximum extent permitted by law, the Company's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar Goods to replace those not delivered over the price of the Goods not delivered.
- 13.6 To the maximum extent permitted by law, and subject to Conditions 13.1-13.5 (inclusive) above the total aggregate liability of the Company arising out of, or in connection with the performance or contemplated performance of the Contract whether for negligence or breach of contract or any case whatsoever shall in no event exceed 120% of the price paid or payable by the Buyer under the Contract.

14. FORCE MAJEURE

- 14.1 The Company shall not be in breach of the Contract or otherwise liable for any failure or delay to deliver the Goods and/or supply the Services arising from circumstances outside the Company's reasonable control (including without limitation act of God, war, riot, act of terrorism, explosion, abnormal weather conditions, fire, flood, lightning, strikes, lockouts, Government action or regulations (UK or otherwise), delay by suppliers, accidents and shortages of materials, labour or manufacturing facilities).
- 14.2 Should the Company be prevented from delivering in the above circumstances, it shall give the Buyer written notice of this fact as soon as reasonably practicable after discovering it.
- 14.3 If the circumstances preventing delivery are still continuing three months after the Buyer receives the Company's notice, then either party may give written notice to the other cancelling the Contract.
- 14.4 If the Contract is cancelled in this way, the Company will refund any payment which the Buyer has already made on account of the price subject to deduction of any amount the Buyer is entitled to claim from the Buyer including under Condition 5.1 which the Company cannot use to fulfil another equivalent order) but the Company will not be liable to compensate the Buyer for any further loss or damage caused by the failure to deliver.

15. INDEMNITY

- The Buyer agrees upon demand to indemnify the Company and its Affiliates against all actions, losses, damages, injury, costs (including legal costs), claims and expenses of whatever nature suffered by the Company and its Affiliates to the extent that the same are caused by or related to:
- 15.1 any infringement or alleged infringement of any patent, registered design, copyright, trade mark or other industrial or intellectual property rights resulting from compliance by the Company with the Buyer's instructions whether express or implied;
- 15.2 design, drawings or specifications given to the Company by the Buyer in respect of Goods provided by the Company for the Buyer; or
- 15.3 defective materials or products supplied by the Buyer to the Company and incorporated by the Company in Goods provided by the Company for the Buyer; or
- 15.4 the improper incorporation, assembly, use, processing, storage or handling of Goods by the Buyer; or
- 15.5 any breach by the Buyer of its contractual obligations arising under the Contract, any representation, statement or tortious act or omission, including negligence and breach of statutory duty, arising under or in connection with the Contract; or
- 15.6 the employment or termination of employment of any employee(s) of the Buyer or its Affiliates or persons providing services similar to the Services whose employment may transfer to the Company or one of its Affiliates in connection with the commencement or termination of the Contract or who claim that their employment or such claims so transfer; or
- 15.7 the termination of employment of any employee(s) of the Company or its Affiliates arising from the termination of the Contract.

16. SALES PROMOTION INFORMATION

Whilst the Company takes every precaution in the preparation of its catalogues, technical circulars, price lists and its other information provided in any media, it is hereby agreed that any such publications and information are for the Buyer's general guidance only and the particulars contained therein shall not constitute any representation or warranty by the Company and the Company shall not be bound thereby.

17. NOTICES

- 17.1 Any notice to be given hereunder shall be in writing and may be delivered or sent by personal delivery or prepaid first class letter post and shall be deemed to have been duly given if sent or delivered to the party concerned at its address specified overleaf or such other address as that party may from time to time notify in writing and shall be deemed to have been served, if sent by post, 4 Business Days after posting.

18. ASSIGNMENT

The Buyer shall not assign or transfer or purport to assign or transfer the Contract or the benefits thereof to any other person without the prior written consent of the Company. The benefit of the Contract is freely assignable by the Company and, in the event of any such assignment, all references in the Contract to the Company are deemed to include its assigns. The Company may at any time subcontract, transfer, mortgage, charge or deal with in any manner any or all of its rights and obligations under the Contract to any third party.

19. LAW

The Contract and any issues, disputes or claim arising out of or in connection with it (whether contractual or non-contractual in nature such as claims in tort, from breach of statute or regulation or otherwise) shall be governed by, and construed in accordance with the laws of New South Wales, Australia.

20. JURISDICTION

All disputes or claims arising out of or relating to the Contract shall be subject to the non-exclusive jurisdiction of the courts of New South Wales, Australia, to which the parties irrevocably submit.

21. HEADINGS

The headings of these conditions are for convenience only and shall have no effect upon the interpretation thereof.

22. HEALTH AND SAFETY

The Buyer agrees to pay due regard to any information or any revised information whenever supplied by the Company (and is deemed to have been given adequate information and to have read and understood it) relating to the use for which the Goods are designed or have been tested or concerning conditions necessary to ensure that they will be safe and without risk to health at all times when they are being set, used, cleaned or maintained by any person at work or when they are being dismantled or disposed of, and the Buyer undertakes to take such steps as may be specified by the above information to ensure that, as far as reasonably practicable, the Goods will be safe and without risk to health at all times as mentioned above and shall procure that any of its Affiliates and any subsequent possessor of the Goods is so advised and follows such steps in accordance with this Condition. For these purposes, the Buyer is deemed to have been given a reasonable opportunity to test and examine the Goods before delivery.

23. GENERAL

23.1 The Company's Affiliates may enforce the provisions of the Contract. A person who is not party to the Contract who is not an Affiliate of the Company shall have no right to enforce any term of the Contract. This Condition does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. The rights of the parties to the Contract to terminate, rescind, or agree any variation, waiver or settlement under the Contract are not subject to the consent of any person that is not a party to the Contract.

The Contract sets out the entire agreement and understanding between the Buyer and the Company in connection with the sale of the Goods and provision of the Services and shall supersede and replace all documentation previously issued by the Company purporting to set out its terms and conditions of sale of Goods/Services. The Buyer acknowledges that the Contract has not been entered into wholly or partly in reliance on, nor has the Buyer been given, any warranty, statement, promise, or representation by the Company or on its behalf other than as expressly set out in the Contract. The Buyer agrees that the only rights or remedies available to it arising out of or in connection with any warranties, statements, promises or representations will be for breach of contract and irrevocably and unconditionally waives any right it may have to any claim, rights or remedies including any right to rescind the Contract which it might otherwise have had.