

**General Terms and Conditions for
Sale and Service Supply**

1 INTERPRETATION

- 1.1 In these Conditions the following words will (unless the context otherwise requires) have the following meanings:
- "Associate"** has the same meaning as given to that term in the Corporations Act 2001;
- "Attaches"** has the same meaning as given to that term in the PPSA;
- "Australian Consumer Law"** means Schedule 2 of the Competition and Consumer Act 2010 (Cth);
- "Collateral"** has the same meaning as given to that term in the PPSA;
- "Conditions"** means the General Terms and Conditions for Specialist Personnel Services set out herein;
- "Consumer"** has the meaning given to it in section 4B and Schedule 2, section 3 of the Australian Consumer Law;
- "Contract"** means any contract for Work between the Customer and the Vendor;
- "Customer"** means the person, firm or company that has offered to purchase or requested any Equipment or Work identified in the Order, and includes any servant, agent, partner, contractor or employee of the Customer;
- "Equipment"** means Equipment supplied by the Vendor (as defined in the Vendor's tender or order acknowledgement);
- "Financing Change Statement"** has the same meaning as given to that term in the PPSA;
- "Financing Statement"** has the same meaning as given to that term in the PPSA;
- "IPRs"** means any intellectual property rights of any nature including without limitation any and all inventions, patents, utility models, design rights, copyright, know how, trade secrets, confidential information, trademarks, service marks, trade names and goodwill;
- "Liquidated Damages"** means the total invoice cost of the Equipment of work outlined in the Order;
- "National Measurement Act"** means the National Measurement Act 1960 (Cth) and all regulation and statutory instruments made thereunder;
- "Order"** means an order placed by the Customer with the Vendor for Work;
- "PPSA"** means the Personal Property Securities Act 2009 (Cth);
- "PPS Law"** means:
- (a) the PPSA;
- (b) any regulation made pursuant to the PPSA; and
- (c) any amendment from time to time made to any other legislation or regulation as a consequence of a PPS Law referred to in paragraph (a) or (b) of this definition;
- "Perfected"** has the same meaning as given to that term in the PPSA;
- "Purchase Money Security Interest"** has the same meaning as given to that term in the PPSA;
- "Registration Commencement Time"** has the same meaning as given to that term in the PPSA;
- "Security Interest"** means:
- (a) any security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust or power, or title retention arrangement;
- (b) a security interest as defined in the PPSA; or
- (c) any document that grants or creates anything referred to in either paragraphs (a) or (b) of this definition and any other thing which gives a creditor priority over any other creditor with respect to any asset or an interest in any asset;
- "Services"** means services supplied by the Owner (as defined in The Agreement);
- "Vendor"** means Able Scale Co Pty Ltd ABN 59 006 269 414 of 21 Green Street, Thomastown in the State of Victoria;
- "Verification Statement"** has the same meaning as given to that term in the PPSA;
- "Work"** means Equipment and/or Services;
- 1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 1.3 A reference to "including" means "including without limitation".
- 1.4 Any agreement, warranty, representation or obligation which binds or benefits two (2) or more persons, binds or benefits those persons jointly and severally.

2 FORMATION

- 2.1 All tenders are made and Orders are accepted by the Vendor subject to these Conditions and they shall apply to all Contracts to the exclusion of any other terms and conditions including without limit those which the Customer purports to apply under any Order. To the extent that there is any inconsistency between any Contract and these Conditions, these Conditions shall apply. Variations to the terms of any Contract will only be effective if agreed in writing. If any such agreed variation increases the time or cost to the Vendor of performing the Contract then the Contract will be adjusted accordingly.
- 2.2 These Conditions supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Equipment including, but not limited to, those relating to the performance of the Equipment.
- 2.3 Orders from the Customer are only binding on the Vendor after a written order acknowledgement has been issued by the Vendor and only on the conditions stated in the order acknowledgement. The Vendor may refuse to accept an Order or part of an Order without giving reason.
- 2.4 All information on weight, dimensions, capacity, price, technical and other data stated in catalogues, prospectuses, circulars, advertisements, illustrated matter and price lists is to be considered approximate. Such information is only to be binding to the extent expressly stated in the order acknowledgement or in other documents forming part of the Contract expressly referring to such information.

3 DELIVERY, NON-DELIVERY, DELAY AND RISK

- 3.1 Unless otherwise expressly agreed in writing by the Vendor:
- (a) delivery times accepted by the Vendor are given in good faith but are an estimate only; and
- (b) delivery of the Equipment is made "Ex Works" in accordance with Incoterms 2010, but the delivery price is exclusive of packing, which will be charged extra. To the extent of any inconsistency between the Incoterms 2010 and these Conditions, these Conditions shall prevail.
- 3.2 The Vendor may deliver Equipment in instalments and perform Services in section in any sequence. Default by the Vendor, however caused, in respect of one or more instalments and/or sections shall not entitle the Customer to terminate the relevant Contract as a whole
- 3.3 **Risk**
- The risk in the Equipment passes to the Customer on delivery to the Customer or into custody on the Customer's behalf, including, but not limited to, delivery to the Customer's agent or carrier, provided that where:
- (a) the Customer fails or refuses to accept delivery of any Equipment when they are ready for delivery in accordance with the relevant Order; or
- (b) The Vendor agrees (at its sole discretion) to postpone delivery of the Equipment at the request of the Customer; or
- (c) the Customer fails to provide any instructions, consents or authorisations required to enable the Equipment to be delivered on the due date;
- the risk in the Equipment shall pass immediately to the Customer, delivery of the Equipment shall be deemed to have taken place and the Vendor may store or arrange for storage of such Equipment and charge the Customer for all related costs and expenses (including storage, insurance, reasonable costs and interest) and may sell such Equipment after expiry of twenty-eight (28) days following such failure or refusal and deduct any monies payable to the Vendor by the Customer from the sale proceeds and charge the Customer for any shortfall below the Contract price.
- 3.4 **Shortages and Non-Delivery**
- Upon delivery to the Customer, all Equipment should be examined. The Vendor shall not be liable for any shortages in, or non-delivery of, Equipment unless the same is notified by the Customer to the Vendor (together with all specific details) in writing within ten (10) days of the actual date of delivery. Subject to such notice being provided the Vendor shall, if it is satisfied that any Equipment have not been delivered and the cause thereof being beyond the reasonable control of the Vendor, at its sole discretion, either arrange for delivery as soon as reasonably possible or give credit to the Customer for such Equipment and this shall be the Customer's only remedy and in lieu of all other rights and remedies which might otherwise be available to the Customer. Shortages in, or non-delivery of, some or part of the Equipment shall not affect the Contract in respect of the other or other parts of the Equipment.
- 3.5 Liquidated damages shall be the Customer's sole and exclusive measure of damages and remedy against the Vendor with respect to the failure to achieve the contractual delivery time for the Work.
- 3.6 The Customer acknowledges that:
- (a) liquidated damages under this clause 3 represent a genuine pre-estimate of the costs and losses likely to be incurred by the Customer if the delay of delivery of Equipment was caused by the negligence or intention of the Vendor; and
- (b) any such amounts payable are not to be construed as a penalty.

4 PROPERTY

4.1 Retention of Title

Property in the Equipment will remain with the Vendor and will not pass to the Customer until such time when the Customer pays all monies owing to the Vendor by the Customer, on all accounts and under any contract (which payments are not to any extent subsequently claimed or clawed back by any person standing in the place or representing the Customer).

4.2 Covenants

- While the Equipment remains the property of the Vendor, the Customer agrees with the Vendor that:
- (a) the Customer holds the Equipment as a fiduciary bailee of the Vendor;
- (b) the Equipment will be stored separately so that they are readily identifiable as the property of the Vendor;
- (c) the Customer will not dispose of the Equipment except with the Vendor's prior written consent or in the ordinary course of the Customer's business;
- (d) the Customer will hold all money received, relating to the sale of the Equipment in a separate account on trust for the Vendor and will pay such monies immediately on request to the Vendor;
- (e) the Customer will not cause the Equipment to lose their identifiable character or be intermingled with other equipment or goods, in any way, either by any process of its own or by a third party, except with the Vendor's prior written consent;
- (f) the money received for the sale of any intermingled Equipment, which contain the Equipment of the Vendor, will be held in trust for the Vendor (to the maximum extent that such "trust" monies represent the total outstanding debt owed to the Vendor on all accounts by the Customer) (and will pay such monies immediately on request to the Vendor);
- (g) the Customer has no right or claim to any interest in the Equipment to secure any liquidated or unliquidated debt or obligation the Vendor to the Customer;
- (h) the Customer cannot claim any lien over the Equipment;
- (i) the Customer will not create any absolute or indefeasible interest in the Equipment in relation to any third party, except with the Vendor's prior written consent;
- (j) pending payment in full for all amounts owed by the Customer to the Vendor on all accounts, the Customer:
- (i) subject to clause 4.4, must not allow any person to have or acquire any Security Interest in the Equipment;
- (ii) must insure the Equipment for their full insurable or replacement value (whichever is higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Customer carries on business;
- (iii) must not remove, deface or obliterate any identifying mark or number on any of the Equipment; and
- (iv) must not move the Equipment from the Customer's premises.

4.3 The Vendor's Rights

If the Customer fails to pay for any Equipment within the period of credit extended by the Vendor to the Customer:

- (a) The Vendor may recover possession of all Equipment (in which property has remained with the Vendor) at any site owned, possessed or controlled by the Customer any the Customer agrees that the Vendor has an irrevocable license to do so without incurring any liability to the Customer or any person claiming through the Customer;
- (b) If required, the Customer will assign to the Vendor any rights of the Customer to any outstanding money relating to the re-supply of the Equipment. The Customer irrevocably appoints the Vendor or its nominee as its attorney to sign all documents and do all things necessary to assign the debts to the Vendor under this clause 4.3, where the Customer has failed to do so within seven (7) days of receiving written notice to do so, and, ratifies any acts the attorney lawfully does or causes to be done with respect to any such assignment of debts.

4.4 PPSA Further Assurances

Clause 4.4 shall only be applicable for Equipment located in the jurisdiction of the Australian or where the grantor of a security interest is an Australian entity.

- (a) If the Vendor determines that a PPS Law applies, or will in the future apply, to any agreement that incorporates these Terms and Conditions of Sale (**Supply Agreement**) or the supply of any Equipment, then the Customer must promptly upon request from the Vendor:
- (i) do anything (including obtaining consents, making amendments to the Supply Agreement or executing a New Supply Agreement) for the purposes of:
- (A) ensuring that any Security Interest created under, or provided for by, the Supply Agreement:
- attaches to the collateral that is intended to be covered by that Security Interest;
 - is enforceable, perfected, maintained and otherwise effective; and
 - any Security Interest created under, or provided for by, the Supply Agreement has the priority contemplated the Supply Agreement; or
- (B) enabling the Vendor, on and from the Registration Commencement Time, to prepare and register a financing statement or financing change statement; or
- (C) enabling the Vendor to exercise any of its powers in connection with any Security Interest created under, or provided by, the Conditions; and
- (ii) provide any information requested by the Vendor in connection with the Conditions to enable it to exercise any of its powers or perform its obligations under the PPS Law.
- (b) Except if section 275(7) of the PPSA applies, each of the Vendor and the Customer agree not to disclose any information of the kind referred to in section 275(1) of the PPSA that is not publicly available.
- (c) Where the Equipment supplied under the Supply Agreement are not used predominantly for personal, domestic or household purposes, the Customer agrees that, on and from the Registration Commencement Time:
- (i) the Vendor is under no obligation to dispose of within a reasonable time or retain any secured property seized by the Vendor under section 125 of the PPSA;
- (ii) following a default, the Customer has no rights to redeem the secured property under section 142 of the PPSA;
- (iii) the Customer has no rights to reinstate this document following a default under section 143 of the PPSA; and
- (iv) despite the Customer paying for particular Equipment itemised in an invoice or order or otherwise in respect of monies owing under or in connection with the Supply Agreement, any payments received by the Vendor from the Customer shall be applied in the following order:
- (A) first, to satisfy any obligations that are owed by the Customer to the Vendor which are unsecured, in the order in which the obligations were incurred;
- (B) second, to satisfy any obligations that are secured but which are not secured by a Purchase Money Security Interest, in the order in which the obligations were incurred; and
- (C) third, to satisfy any obligations that are secured by a Purchase Money Security Interest, in the order in which the obligations were incurred.
- (d) Where the Equipment supplied under the Supply Agreement are not used predominantly for personal, domestic or household purposes, on and from the Registration Commencement Time, the Customer waives its rights to receive:
- (i) a notice of the Vendor's proposal to remove PPSA personal property which has become an accession under section 95 of the PPSA;
- (ii) a notice of the Vendor's proposal to exercise rights in accordance with land law under section 118(1)(b) of the PPSA;
- (iii) a notice of the Vendor's proposal to dispose of any PPSA personal property under section 130 of the PPSA;
- (iv) a notice of the Vendor's proposal to retain PPSA personal property under section 135 of the PPSA;
- (v) details of the amounts paid to other secured parties in a statement of account provided by the Vendor under section 132(3)(d) of the PPSA;
- (vi) a statement of account under section 132(4) of the PPSA; and
- (vii) a copy of, or notice of, any Verification Statement confirming registration of a Financing Statement or a Financing Change

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| | Statement relation to any Security Interest under, or provided for by, the Supply Agreement. | 7.3 | Any replacement Equipment will be warranted on the terms set out in this clause 7. |
| (e) | Anything that is required by the Vendor to be done under this clause 4.4 shall be done by the Customer at its own expense. The Customer agrees to reimburse the costs of the Vendor in connection with any action taken by the Vendor under or in connection with this clause 4.4. | 7.4 | Any second-hand or used Equipment will be warranted on the terms set out in this clause 7 except that the warranty period shall be three (3) months from the date of delivery. |
| 5 | PRICE AND BINDING PERIOD OF QUOTATIONS AND TENDERS | 8 | FORCE MAJEURE |
| 5.1 | Unless otherwise agreed, quotations and tenders lapse after thirty (30) days from their date. | 8.1 | In case of Act of God, labour disputes, civil commotion, governmental or official actions, war, acts of terror or any other event which was unforeseeable or outside the reasonable control of the Party affected, the Parties shall be temporarily relieved from their obligations during the period of time such events continue and to the extent their liabilities are affected. The above-stated shall also be applicable to the Vendor if a sub-supplier of the Vendor is affected by such event and/or in case the Party concerned is already in default. |
| 5.2 | Unless fixed prices have been agreed in writing by the Vendor, all sales are made at the prices valid at the date of the Vendor's tender or the date of the Vendor's order acknowledgement (as the case may be). | 8.2 | The Parties are committed to give each other the necessary information which may reasonably be expected without delay, and to adjust their obligations in good faith to the changed circumstances. |
| 5.3 | The Vendor shall neither be entitled nor obliged to implement changes in the scope of supply, before the Parties have reached an agreement regarding the corresponding adjustment of the Contract price and the delivery time. | 9 | INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY |
| 5.4 | Unless otherwise agreed in writing by the Vendor prices set out in any of the Vendor's price lists, tenders or order acknowledgment are Ex Works (Incoterms 2010) and exclusive of any taxes, duties, fees, charges or similar and any costs of carriage, package and insurance which shall be payable in addition to the price. | 9.1 | The Customer shall not, under any circumstances acquire rights in or to any of the IPRs (including, without limitation, copyright) subsisting in, resulting from or relating to Work, or any plans, descriptions, blue-prints, designs, technical information, software, documents, drawings and/or specification relating thereto either: |
| 5.5 | Unless otherwise agreed by the Vendor in writing, sums payable by the Customer to the Vendor shall fall due and be effected by the Customer net cash not later than thirty (30) days after the date of the invoice. If any sum payable under the Contract is not paid when due then without prejudice to the Vendor's other rights under these Conditions, such sum shall interest from the due date until payment is made in full, both before and after any judgement, at six per cent (6%) per annum over the Cash Rate Target of the Reserve Bank of Australia in force on the due date of payment. Where the Customer has been approved for credit such credit can be reviewed, modified or cancelled at any time in the sole discretion of the Vendor. | (a) | supplied by or on behalf of the Vendor to the Customer in connection with Work; |
| 5.6 | The set-off with counter-claims by the Customer shall only be allowed with undisputed claims or in accordance with an appropriate court judgement. | (b) | or resulting from the Work, unless otherwise expressly agreed by the Vendor in writing. |
| 6 | PROVISION OF SERVICES | | If the Customer shall in any way acquire any such rights then the Customer shall immediately inform the Vendor and shall forthwith take such steps as may be required by the Vendor to assign such rights or vest such title in the Vendor. |
| 6.1 | Unless otherwise expressly agreed in writing, Services rendered by the Vendor shall be charged on a time basis in accordance with the Vendor's general rates for personnel valid at the date of the provision of the Services. Such rates are exclusive of board, lodging and transportation and such other facilities as are to be provided by the Customer free of charge. All travelling expenses and costs of carriage of luggage, instruments and tools incurred by the Specialist Personnel shall be borne by the Customer. Unless otherwise agreed the Vendor's execution of Services is subject to manual assistance being rendered by the Customer either through engine room staff or other persons made available by the Customer. | 9.2 | The Vendor shall have the right to apply any trademarks, trade names and/or service marks to the Equipment. The Customer acknowledges that no rights are granted to the Customer by the use of the Customer of such trademarks, trade names and/or service marks. The Customer shall not deface, remove or obliterate any trademarks, trade names or logos applied by the Vendor on or in relation to the Equipment. |
| 6.2 | The taking-over of the Works by the Customer shall be deemed to have taken place at the latest, when the Customer has received the Vendor's notice that the Work has been completed, provided that the Work is as required for taking-over according to the Contract. Minor deficiencies which do not affect the efficiency of the Work shall not prevent taking-over. The period, referred to in clause 7.1 shall start to run at the latest when the Work is ready for taking-over in accordance with this clause 6.2. | 9.3 | The Customer shall keep confidential and not use, without the prior written consent of the Vendor all or any information including, without limit, that supplied by the Vendor to the Customer or disclosed to or obtained by the Customer pursuant to or as a result of the Contract, and shall not divulge the same to any third party except to the extent that any such information is or becomes public through no fault of the Customer, or disclosure of the same is required by law or by any other governmental or other regulatory body. |
| 6.3 | The Vendor will present monthly accounts based on the work sheets. The final accounts shall be submitted to the Customer within a reasonable period after the completion of the Works. | 10 | LIMITATION OF LIABILITY |
| 7 | WARRANTY | 10.1 | There shall be no claims that are not provided for in this Contract. Save as expressly stated herein all warranties, terms and conditions whether express or implied by statute, common law usage trade custom or otherwise are hereby expressly excluded to the fullest extent permitted by law. Therefore to the extent to which the Vendor is entitled to do so under statute, common law usage trade custom or otherwise, the Vendor shall in no event be liable to the Customer, by way of indemnity or by reason of any breach of contract or statutory duty or in tort or otherwise, for any and all claims, losses, damages such as but not limited to: |
| 7.1 | Guarantees and liabilities of the Vendor under the Australian Consumer Law. | (a) | any loss of hire, business contracts, revenues or anticipated savings; |
| (a) | Only in the cases where the Australian Consumer Law is applicable (<i>in particular (aa) because the Customer is a Consumer who acquires the Equipment and services as a consumer, including in business to business transactions where (i) the price is under \$40,000 (ii) Equipment are of a kind commonly acquired for personal domestic or household use or (iii) Equipment are a vehicle or trailer acquired for personal use in transport of Equipment, and (bb) because the Equipment are not purchased to be resold or to be used up in a manufacturing or repair process</i>) and the guarantees and liabilities under the Australian Consumer Law cannot be lawfully excluded, restricted or modified, the Equipment will come with guarantees that cannot be excluded under the Australian Consumer Law and therefore the Consumers/Customer are entitled to a replacement or refund for a major failure and for compensation for any other loss or damage caused thereby. Consumers are also entitled to have the Equipment repaired or replaced if the Equipment fails to be of acceptable quality and the failure does not amount to a major failure. | (b) | damage to the Customer's reputation or goodwill; |
| (b) | Except only for clause 7.1(a), those rights and remedies that the Customer has in respect of the Equipment under the Australian Consumer Law and similar state and territory laws applicable to Consumers in Australia and which cannot be lawfully excluded, restricted or modified (Non-excludable Rights): | (c) | any loss resulting from any claim made by any third party; |
| (i) | Notwithstanding any other provisions of this contract, the liability of the Vendor to the Customer, whether arising under or in connection with the contract or the performance or non-performance thereof of anything incidental thereto, and whether by way of indemnity, by statute (to the extent that it is possible to exclude such liability), in tort (for negligence of otherwise), or on any other basis in law or equity is hereby excluded; and | (d) | loss of production, loss of profit; |
| (ii) | To the extent permitted by law, the Vendor's liability in respect of any Non-excludable Rights shall be limited as its option either to in respect of Equipment, the repair or replacement of the Equipment or the cost of repairing or replacing the Equipment provided that such Equipment are returned to the Vendor in their delivered state at the Customer's expense if so requested by the Vendor within twelve (12) months from the date of their delivery. The Vendor shall especially not be responsible for offloading of cargo and/or any recondition works necessary to repair and/or rectify the defect. Clause 7.1 shall be the Customer's only remedy and in lieu of any other rights and remedies which might otherwise be available to the Customer. | (e) | default under any business contracts and/or for any indirect or consequential loss or damage which may be suffered by the Customer in connection with the Contract. |
| (iii) | If the Australian Consumer Law is applicable and the guarantees are liabilities under the Australian Consumer Law cannot be lawfully excluded, restricted or modified and the Vendor has to guarantee for Equipment & services under the Australian Consumer Law, the benefits and warranties under clause 7.2 shall not apply. | 10.2 | The Customer expressly warrants and covenants with the Vendor that the Customer is liable for, and shall indemnify and hold the Vendor harmless against, all or any liability resulting from the improper or inaccurate use of an instrument verified pursuant to the National Measurement Act. |
| 7.2 | Australian Consumer Law does not apply. | 10.3 | Without prejudice to Conditions 3.5, 3.6, 7 and 10.1 and subject to any right that a Consumer may have under the Australian Consumer Law the Vendor's total liability for each Order in contract, tort, general law or otherwise shall be limited to the value of that Order. |
| (a) | Subject to clause 7.1 and clause 7.4, the Vendor warrants for a period of six (6) months from the date the Equipment were delivered or the Services rendered, that such Equipment and/or Services are free from substantial defects in materials or manufacture and that such Services were carried out with reasonable skill and care. | 10.4 | The Customer expressly warrants and covenants that the Vendor shall not be responsible for the purpose for which the Equipment is used or for the information programmed or otherwise applied to the Equipment (including product descriptions, barcodes, weights, pricing, tare values, and nutritional information) and that it is the Customer's responsibility to verify the accuracy and suitability of such information. |
| (b) | The warranty given in clause 7.2(a) will not apply: | 11 | STATUTE OF LIMITATIONS |
| (i) | where the defect complained of arises from any drawing, design specification or intellectual property right supplied by the Customer or arises from normal wear and tear, wilful damage, the Customer's negligence, abnormal working conditions, or misuse or alteration of repair of the Equipment without the Vendor's approval or arises from any failure to follow the Vendor's advice (whether oral or in writing or whether relating without limit to the fabrication, operation, use or maintenance of the Equipment); | | To the extent permitted by law and without prejudice to clause 10, the limitation period applicable to any claims of the Customer against the Vendor, besides warranty claims to which clause 7 applies, shall be limited to twenty-four (24) months after delivery of the Equipment or Services to the Buyer. |
| (ii) | if the Vendor or its agent is not given a reasonable opportunity to safely inspect the Work; | 12 | TERMINATION |
| (iii) | if the total price for the Equipment or Services has not been paid by the due date for payment; | 12.1 | If the Customer fails to make any payment when due or to perform any of its other obligations on time, the Vendor shall be entitled to suspend its performance of the Contract until the failure is remedied; and regardless of whether the Vendor elects to suspend performance: |
| (iv) | where the Equipment supplied was second-hand or used Equipment; | (a) | the time for performance of the Contract by the Vendor shall be automatically extended accordingly; and |
| (v) | if the damage was caused by the Customer's personnel. | (b) | any cost (including financial costs and storage, demurrage or other charges) thereby incurred by the Vendor shall be paid by the Customer. |
| (c) | Subject to clauses 7.1 and 7.4, the Vendor makes no other express or implied warranties or guarantees and the obligations of the Vendor under the Contract are limited such that in the event of a breach by the Vendor of the warranty in clause 7.2 or any defect in any Equipment or Services the Vendor shall only be obliged (and shall have no further liability in contract, negligence or otherwise for any defect in quality of the Equipment and Services) at its option either to credit the price (if already paid) attributable to the faulty Equipment or Services; or | 12.2 | Without prejudice to any of its other rights the Vendor may immediately terminate the Contract if any of the following occurs or is likely to occur: |
| (i) | repair, rectify or replace the faulty Equipment or Services provided that such Equipment are returned to the Vendor in their delivered state at the Customer's expense if so requested by the Vendor within twelve (12) months from the date of their delivery. The Vendor shall especially not be responsible for offloading of cargo and/or any precondition works necessary to repair and/or rectify the defect. | (a) | suspension under clause 12.1 continues for more than 120 days; |
| | | (b) | the Customer is in breach of any of its obligations under the Contract which, if capable of remedy, the Customer has not remedied within thirty (30) days of receiving written notice from the Vendor; or |
| | | (c) | the Customer is wound up or becomes insolvent or has a receiver or administrative receiver appointed or any equivalent or analogous event occurs in any other jurisdiction or the Customer ceases or threatens to cease to carry on business or otherwise is unable to pay its debts when they fall due. |
| | | 12.3 | Upon termination, howsoever arising, the Vendor shall be entitled forthwith to cease any further work under the Contract without liability to the Customer. Without prejudice to the Vendor's other remedies under the Contract, within fourteen (14) days of such a notice of termination, howsoever arising, the Customer shall pay to the Vendor: |
| | | (a) | the outstanding balance of the Contract price of the Work which has been delivered or performed, and |
| | | (b) | the costs incurred or committed by the Vendor up to the date of notice of termination in performing such work which is not yet completed plus a reasonable margin to be agreed between the Parties which shall not be less than twenty (20) per cent of the Contract price, and |
| | | (c) | the costs reasonable incurred by the Vendor as a result of the termination. |
| | | 12.4 | Termination, expiry or completion of the Contract or any part of it, shall not affect or prejudice the provisions of clauses 9, 10, 12, and 13. |
| | | 13 | GENERAL |
| | | 13.1 | The Vendor and the Customer shall only be entitled to assign or sub-contract any of its rights or the obligations under the Contract with the prior written consent of the other Party. |
| | | 13.2 | If any term, clause, condition or part of these Conditions is found to be any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from these Conditions and shall be ineffective without, as far as is possible, modifying any other provision or part of these Conditions and this shall not affect any other provisions of the Contract which shall remain in full force and effect. The Parties are committed to replace the invalid provision by another – with respect to the commercial effect – equivalent provision, in so far as this is possible. |
| | | 13.3 | The Contract and these Conditions shall be construed in accordance with and governed in all aspects by the laws of the State of Victoria, excluding the rules of conflicts of law. The application of the Convention of the United Nations of 11.4.1980 on Contracts for the International Sale of Equipment ("CISG") shall be excluded. |
| | | 13.4 | All disputes arising out of or in connection with the Contract and these Conditions, including any question regarding their existence, validity or termination, shall be finally settled in accordance with the Rules of Conciliation and Arbitration of International Chamber of Commerce in Paris (ICC), by three arbitrators, appointed under such rules. The arbitration proceedings shall take place in Melbourne. The procedural law of this place shall apply where the Rules are silent. Each Party shall nominate one arbitrator for confirmation by the competent authority under |

said rules. Both arbitrators shall agree on the third arbitrator within thirty (30) days. Should the two arbitrators fail, within the above time-limit, to reach agreement on the third arbitrator, he shall be appointed by the ICC. The language to be used in the arbitration proceeding shall be English.

14 **INDEMNITY**

The Customer indemnifies and holds the Vendor harmless against;

- (a) all liabilities, direct and indirect loss, damages, costs or expenses incurred or suffered by the Vendor; and
- (b) all actions, proceedings warranty claims, claims or demands made against the Vendor; as a direct or indirect result of any action by the Customer or arising under or in connection with these Conditions, or the supply of Equipment or Services by the Vendor.

15 **WAIVER**

- 15.1 Failure by the Vendor to enforce any of these Conditions shall not be construed as a waiver of any of the Vendor's rights hereunder or a waiver of a continuing breach.

16 **ACCEPTANCE**

- 16.1 Acceptance by the Customer of these Conditions as amended by the Vendor from time to time may be by any one of the two following ways:
 - (a) by signing and returning to the Vendor a copy of these Conditions or an order confirmation with reference to these Conditions;
 - (b) by performing an act that is done with the intention of adopting or accepting these Conditions after receiving these Conditions, including but not limited to continuing to order Equipment or Services; or
 - (c) by oral acceptance.
- 16.2 Failure to accept these Conditions within seven (7) days of receipt by the Customer of these Conditions may result in the immediate withdrawal of the Vendor's offer to supply Equipment or services.

17 **NATIONAL MEASUREMENT ACT**

- 17.1 The Customer shall not use, sell, supply or install Equipment for trade use unless the Equipment has been marked with a verification mark pursuant to the National Measurement Act.
- 17.2 It is the sole responsibility of the Customer to receive evidence that the Equipment has been marked with a verification mark pursuant to the National Measurement Act.