

SMS SciTech Pty Ltd ACN. 661 739 180

Terms and Conditions for the Supply of Goods and Services

1. Supply of the Goods and/or Services

- 1.1 The Company undertakes to supply the Goods and/or Services to the Customer, and the Customer agrees to procure the Goods and/or Services from the Company, in strict adherence to the contractual provisions.

2. The Contract

- 2.1 The Contract comprises the following components: the Terms and Conditions, any order confirmation and/or delivery documentation, the Purchase Order, and the Quote. In the event of any discrepancies among these documents, the document listed higher in the aforementioned hierarchy shall take precedence to the extent of the inconsistency.
- 2.2 The Company shall not be obligated to comply with the Purchase Order, and consequently, the Contract, until the Purchase Order is expressly accepted by the Company in writing, and:
- (a) Upon acceptance of the Purchase Order by the Company, both parties mutually acknowledge the formation of the Contract and their immediate commitment to abide by its terms and conditions;
 - (b) Any modifications to the Contract can only be made with the Company's explicit written consent. Furthermore, the Company is not obligated to adhere to any terms and conditions put forth by the Customer.
- 2.3 The Customer is prohibited from canceling a Purchase Order once the Contract has been established in accordance with clause 2.2, except in the following circumstances:
- (a) The Company accepts the cancellation in writing; and
 - (b) The Customer must provide written indemnification to the Company for any losses, expenses, or liabilities incurred or suffered by the Company due to the cancellation.

3. Price

- 3.1 Prices are quoted based on the prevailing currency exchange rates at the time of the quotation, and the corresponding exchange rate factor is documented in the Company's quotation form.
- 3.2 Any fluctuations in currency exchange rates between the time of the Company's quotation and the issuance of the Company's invoice will be adjusted using the following formula:

$$(\text{Quoted Price} / \text{Quotation Exchange Rate}) \times \text{New Exchange Rate}$$

- 3.3 For Customers located in Australia, all prices are provided on the basis of delivery to the Customer's premises with all associated expenses covered (INCOTERM DDP), unless explicitly indicated otherwise in the quotation.
- 3.4 For Customers located in any country other than Australia, the Company's prices are quoted based on INCOTERM DAP (Delivered at Place), which includes freight costs but excludes local taxes and GST.
- 3.5 The quoted price for any Goods and/or Services does not include GST or any other tax mandated by law, unless explicitly specified otherwise.
- 3.6 If the Customer has requested duty-free prices, it is the Customer's responsibility to provide the Company with the necessary documentation required for the Company to obtain duty-free import clearance from Australian Customs.
- 3.7 The Purchaser is required to provide the Company with its ABN (Australian Business Number) or an equivalent company or business number if located outside Australia, as a mandatory component of the Purchase Order. The Company will not proceed with the supply of any Goods and/or Services until the ABN (or equivalent overseas company or business number) is provided to the Company.
- 3.8 The Company reserves the right, at any time prior to the supply of the Goods and/or Services ordered pursuant to a Purchase Order to:
- (a) increase the price of the Goods; and/or
 - (b) Services;
- to account for, among other factors, any rise in the Company's costs associated with providing the Goods and/or Services. Such factors may include, but are not limited to: substantial increases in taxes or levies; fluctuations in exchange rates; alterations in the specifications or quantities of the ordered Goods and/or Services by the Customer; or any delays caused by changes in the Customer's instructions.
- 3.9 In the event that the Customer does not wish to accept the price increase imposed by the Company as outlined in sub-clause 3.8, the Customer, subject to sub-clause 2.3, has the option to cancel any or all forthcoming orders of Goods and/or Services with the Company.
- 3.10 Prices do not include installation, commissioning or user training unless expressly stated otherwise.
- 3.11 Prices are valid for a period of thirty (30) days from the issue of the quote by the Company.

4. Terms of Payment

- 4.1 The Customer is required to settle the Company's invoice within a period of 14 days from the date of issuance, unless the Company has explicitly agreed to a different payment term.
- 4.2 The Company reserves the right to request prepayment of any invoice in part or in full.
- 4.3 High Value Transactions will require an 80% prepayment which will be requested once the order is placed.
- 4.4 Where installation and commissioning is part of the transaction:
 - (a) payment is due within 14 days of successful completion by the Company; unless
 - (b) the client has chosen to delay installation and commissioning, then payment will be due within 14 days of delivery.
- 4.5 The Company reserves the right to charge 9% interest, calculated on a daily basis for late payments.
- 4.6 In the event that any portion of the invoice is subject to dispute, the remaining balance shall still be considered due and payable within 14 days from the date of invoice issuance. The Customer does not possess the right to offset any claims against the Company from outstanding amounts.
- 4.7 If the Customer:
 - (a) does not make payment by the invoice due date;
 - (b) commits any other breach of the Terms and Conditions;
 - (c) becomes insolvent or is reasonably suspected by the Company to be insolvent;
 then the Company may do any of the following at their discretion and without limiting any other rights or claims available to the Company:
 - (d) Charge late payment fees, calculated on a daily basis at bank overdraft rates, plus an additional 6% handling charge;
 - (e) Call for the Customer's full payment of all items received even if complete delivery is not possible;
 - (f) Cancel or suspend any unfulfilled orders or cease providing any services;
 - (g) Terminate any orders or contracts between the Company and the Customer with immediate effect and request the immediate payment of all outstanding invoices;
 - (h) Cancel any discount, credit arrangement or other commercial agreement in place;
 - (i) Enter, at any time, into the Customer's premises in which the Company's goods are located to enable the Company to inspect or reclaim the goods without liability for trespass, negligence or payment of any compensation;
 - (j) Lodge a caveat or similar title over any property of the Customer, and at the expense of the Customer, to enable the Company to recover outstanding money.

5. The Goods

The Customer represents and agrees that:

- (a) it has not relied on the advice of the Company in determining whether the Goods are fit for the purpose for which they are ordered and/or comply with the required statutory or other specifications for the Goods (the **Goods Specifications**);
- (b) the Company will not be liable to the Customer or any third party for the failure of the Goods to be fit for the purpose for which they are ordered and/or meet the Goods Specifications;
- (c) it indemnifies the Company against any loss that the Company or Customer suffers, incurs, or is liable for as a result of the failure of the Goods to be fit for the purpose for which they are ordered and/or meet the Goods Specifications;
- (d) the Company may, in its sole discretion, make any changes to the Goods to ensure that they meet the Goods Specifications and, pursuant to sub-clause 3.8, the Customer agrees to pay for any price increase associated with these changes;
- (e) the Customer cannot rely on any representation, promise, statement or description made by the Company other than those set out in writing as part of the quote;
- (f) Once the Company has accepted a Purchase Order it cannot be cancelled by the Customer without written approval by the Company;
- (g) the supply of goods and services is subject to availability. The Company reserves the right to suspend or discontinue the supply of goods or services at any time;
- (h) if the Company is unable to completely fulfil the Purchase Order, the Customer has to accept part fulfillment and these Terms and Conditions apply to the items actually delivered;
- (i) The Company reserves the right to refuse quotation or delivery against any orders placed if:
 - (a) the Company has reasonable doubt of lawful product use or;
 - (b) if the Company has any other concerns about the Customer's integrity.
 the Company is not required to specify the reason for refusing quotations or deliveries.

6. Delivery of the Goods

- 6.1 Subject to clause 5, the Company agrees to provide the Goods and deliver them to the Customer:
 - (a) at the Customer's premises, as specified in the Purchase Order (the **PO Delivery Address**);
 - (b) in accordance with the date specified in the Purchase Order (the **PO Delivery Date**), or otherwise in accordance with this clause.
- 6.2 The Company's services explicitly exclude any form of onsite transportation.

- 6.3 If the Company cannot deliver the Goods on the PO Delivery Date and/or to the PO Delivery Address for any reason, the Company will:
- (a) notify the Customer that it cannot deliver the Goods to the Customer on the PO Delivery Date and/or to the PO Delivery Address; and
 - (b) deliver the Goods to the Customer on the first possible date after the PO Delivery Date and to an alternate address nominated by the Customer to the Company in writing.
- 6.4 If, due to any act, matter or thing beyond the control of the Company, the PO Delivery Address is unattended, delivery cannot otherwise be effected or the Goods cannot be dispatched, the Company may (in its sole discretion) store the Goods or take such other steps it considers appropriate at the Customer's risk and expense.
- 6.5 Upon delivery of the Goods to the Customer, the Customer:
- (a) agrees that it must immediately unload the Goods; and
 - (b) has seven (7) days to report any alleged transport damage to the Company in writing and (quoting the Company's Invoice), if the Customer does not notify the Company within that period, the Customer will be deemed to have accepted the Goods.
- 6.6 The Company may withhold delivery of the Goods if:
- (a) the Company, in its sole discretion, considers that the financial position of the Customer is sufficiently uncertain to warrant the Company withholding delivery to protect the Company's interests;
 - (b) subject to clause 4, the terms for payment for the Goods have not been strictly adhered to.
- 6.7 Where the Company has agreed to credit terms with the Customer, then:
- (a) the Customer must pay for the Goods within the terms of any Credit Application agreed to by the Company;
 - (b) the Company may, regardless of any credit terms that it has extended to the Customer, require the Customer to pay cash in full prior to the delivery of the Goods.

7. Return of the Goods

- 7.1 The Customer may not return the Goods unless:
- (a) it has obtained the prior written authority of the Company to do so;
 - (b) it complies with the notification requirement set out in sub-clause 6.6(b) and returns the Goods to the Company within 10 business days of the date on which the Goods are delivered;
 - (c) it agrees in writing to pay all return freight charges and to pay a re-stocking charge equal to 20% of the invoice price of the Goods;
 - (d) the returned goods are in original packaging and in as-new condition. If not returned in as-new condition the Company will apply trade-in practice.
- 7.2 To the fullest extent permitted by law, the Customer agrees that this clause does not apply to any Goods that have been custom made, or specifically acquired, for the Customer by the Company.

8. Equipment Trade-in

The Customer agrees that:

- (a) any goods traded in by the Customer will remain the Customer's property until complete delivery to the Company's nominated point of delivery;
- (b) the Customer will bear the full expense of any associated delivery or shipment costs unless otherwise expressly specified by the Company;
- (c) any goods traded in by the Customer must be supplied with a Declaration of Decontamination to protect the Company and its staff;
- (d) the Customer will bear **full** responsibility of any damages occurred during the transport of trade-in goods;
- (e) the Company reserves the right to reduce their trade-in prices should the trade-in equipment be found in worse condition than inspected before trade-in prices were agreed upon.

9. Risk and Title

- 9.1 The risk of loss or damage to the Goods passes to the Customer on dispatch of the Goods, and from that time the Customer assumes all risk of loss and damage to the Goods including, but not limited to, damage caused by unloading the Goods after delivery.
- 9.2 Notwithstanding any other provisions in these Terms and Conditions, and notwithstanding that the Customer has possession of the Goods, title to the Goods will remain with the Company (and no legal or equitable interest or property in the Goods will pass to the Customer) until:
- (a) the Customer has paid in full the invoice relating to the Goods; and
 - (b) the Customer has paid any amounts outstanding under any previous invoices issued to the Customer by the Company.
- 9.3 Until title to the Goods passes to the Customer, the Customer holds the Goods as bailee of the Company and must:
- (a) not encumber the Goods;
 - (b) store, mark and/or handle the Goods in such a way that they are at all times easily identifiable and distinguishable from the Customer's other goods and property or the goods and property of any other third party;
 - (c) allow the Company full and free access to the Customer's premises where the Goods are located for the purpose of the Company retaking possession of the Goods if the Customer is in breach of any of these Terms and Conditions;
 - (d) not dispose of the Goods unless and until all of the following conditions are satisfied:
 - (i) the Goods are disposed of to a bona fide sub-purchaser in the ordinary course of the

- Customer's business;
- (ii) the Contract has not been terminated by the Company for any reason;
- (iii) the Customer holds all moneys received from a sub-purchaser of the Goods in trust for the Company and in a separate bank account until the Customer has paid the full amount for the Goods to the Company.

10. Export restrictions

The Customer acknowledges that:

- (a) all goods supplied by the Company are intended for use within Australia, New Zealand and the Islands of the South West Pacific;
- (b) the goods must not be re-exported without prior consent of the Company;
- (c) all re-exports are subject to Australian and international export regulations and restrictions;
- (d) the Company accepts no liability for any re-exports of goods.

11. PPSA

- 11.1 Unless the context requires otherwise, terms and expressions used in this clause have the meanings given to them in, or by virtue of, the *Personal Property Securities Act 2009* (Cth) (**PPSA**).
- 11.2 The Customer acknowledges and agrees that the Contract constitutes a security agreement under the PPSA, as a result of which:
 - (a) the Company has an interest in the Goods (including any goods to be supplied in the future) and any proceeds;
 - (b) the Company's rights in the Goods established under this clause are a 'purchase money security interest' (**PMSI**) and the Company will have a PMSI in proceeds of the Goods.
- 11.3 The Customer agrees to do anything required by the Company to enable the Company to register its security interest in the Goods and/or its PMSI, including but not limited to paying all costs, expenses and other charges incurred by the Company in:
 - (a) preparing, lodging or registering any financial statement or finance change statement in relation to the Company's security interest in the Goods and/or its PMSI; and
 - (b) maintaining those registrations, and security interest in the Goods and/or its PMSI.
- 11.4 The Customer must not:
 - (a) charge the Goods in any way;
 - (b) grant any interest in the Goods; or
 - (c) allow any third party to acquire a security interest in the Goods;
 while the Goods remain the property of the Company.
- 11.5 If the Customer fails to comply with any of the Terms and Conditions, then the Customer:
 - (a) must return any Goods on which there are amounts outstanding on receiving written request from the Company;
 - (b) authorises the Company, and/or any person authorised by the Company, to enter the Customer's premises where the Goods are located to take possession of the Goods; and
 - (c) acknowledges that the Company may retain, sell or otherwise dispose of the Goods.
- 11.6 The Customer acknowledges and agrees that:
 - (a) it waives its rights:
 - (i) to receive notices under sections 95, 118, 121(4), 130, 132(3), 132(4) and 135 of the PPSA;
 - (ii) as a grantor and a debtor under sections 142 and 143 of the PPSA;
 - (b) it agrees that, where the Company has rights additional to those in chapter 4 of the PPSA, those rights will continue to apply and will not be limited by section 123 of the PPSA; and
 - (c) it will not disclose, and will not authorize the disclosure of, any information of the kind described in section 275(1) of the PPSA to any person or entity.

12. Loaned Equipment

- 12.1 Where the Company provides the Customer with loan or rental equipment (the **Equipment**) the Customer must:
 - (a) use the Equipment for its intended purpose and according to the manufacturer's user manual;
 - (b) exercise reasonable care and diligence to ensure the safe keeping of the Equipment;
 - (c) not hire, re-loan, sell, show or demonstrate the Equipment to a third party;
 - (d) not alter, tamper, modify or attempt repair of the Equipment;
 - (e) ensure the Equipment is stored and returned in its original condition, including all original packaging, manufacturer's user manuals and other supplied documentation; and
 - (f) return the Equipment or issue a purchase order, when the equipment is called upon by the Company.
- 12.2 The Company reserves the right to charge the Customer for all reasonable costs of repair or replacement of the Equipment, at the Company's sole discretion.
- 12.3 All Equipment remains the property of the Company.

13. Software

The Customer acknowledges that whenever any software products (the **Software**) are incorporated or form part of the Goods:

- (a) the Software is licensed and not sold to the Customer;
- (b) words in either the Purchase Order, invoice or otherwise such as "purchase" or "sell" are understood to mean "license";
- (c) The Company is granting the Customer a royalty free, non-exclusive and non-transferrable licence for the Software;
- (d) the Customer is not entitled to sublicense the Software;
- (e) the Software is solely supplied for the Customer's internal use; and
- (f) the Customer is not to make the Software available to third parties.

14. The Services

The Customer warrants and agrees that:

- (a) it has not relied on the advice of the Company in determining whether the Services are fit for the purpose for which they are ordered and/or will produce an outcome that is compliant with the required statutory or other specifications for the Services (the **Services Specifications**);
- (b) the Company will not be liable to the Customer or any third party for the failure of the Services to be fit for the purpose for which they are ordered and/or meet the Services Specifications;
- (c) it indemnifies the Company against any loss that the Company or Customer suffers, incurs, or is liable for as a result of the failure of the Services producing an outcome that is not fit for the purpose for which they are ordered and/or meet the Services Specifications;
- (d) the Company may, in its sole discretion, make any changes to the Services to ensure that they meet the Services Specifications and, pursuant to sub-clause 3.8, the Customer agrees to pay for any price increase associated with these changes.

15. The Company's Installation Service

The Customer acknowledges that:

- (a) If the Company's staff or authorized representatives are directed by the Customer to visit any Customer premises for the purpose of installing goods or providing services, the Customer will ensure that suitable policies and procedures are in effect and adhered to, in accordance with established industrial practices and occupational health and safety (OH&S) standards.
- (b) it is the Customer's responsibility to prepare the installation site and to provide any services required such as electricity, water, wastewater, air conditioning and compressed air lines;
- (c) the Company's services do not include any form of site preparation of services provision;
- (d) the Customer is responsible to transport the Goods to the final destination;
- (e) any cost for special equipment or handling support associated with the installation will be in addition to the Customer's account.

16. Provision of the Services

- 16.1 Subject to sub-clause 16.2, the Company agrees to provide the Services in accordance with the Contract.
- 16.2 If the Company cannot deliver the Services in accordance with the Contract for any reason, the Company will:
 - (a) notify the Customer that it cannot provide the Services in accordance with the Contract; and
 - (b) provide the Services as soon as practicable and as close as practicable to the terms of the Contract.
- 16.3 Where the Company has agreed to credit terms with the Customer, then:
 - (a) the Customer must pay for the Services within the terms of any Credit Application agreed to by the Company;
 - (b) the Company may, regardless of any credit terms that it has extended to the Customer, require the Customer to pay cash in full prior to the provision of the Services.

17. Warranty and Liability

- 17.1 Subject to any condition, warranty or right implied or imposed by:
 - (a) the *Competition and Consumer Act 2010* (Cth) (CCA); or
 - (b) any other law that cannot be excluded by agreement, or any express provision in the Terms and Conditions;
 the Company warrants new products for 12 months from the date of the invoice against defective parts and faulty workmanship.
- 17.2 The Company warrants consumable items (such as vacuum gauge filaments, electron sources and the like) for 6 months from the date of the invoice.
- 17.3 The Company warrants service and repair work that it performs for:

- (a) 3 months for regular service work; and
 - (b) 12 months from the date of the invoice for warranty work.
- 17.4 The Company warrants preventative and repair service work:
 - (a) 12 months on parts used for the work; and
 - (b) 3 months for labour.
- 17.5 The Company warrants turbo pumps for a period of 12 months for parts and labour where:
 - (a) the turbo pumps have undergone a vibration test before and after service; and
 - (b) the vibration test must have indicated 100% compliance with the official Pfeiffer Vacuum test criteria.
- 17.6 Subject to the qualifications in section 64A of schedule 2 of the CCA or any other law, the Company's liability for any breach of any implied or imposed condition, warranty or right in relation to the supply of the Goods and/or Services is limited to one or more of the following (at the sole discretion of the Company):
 - (a) in the case of the Goods:
 - (i) replacement of the Goods, or supply of goods equivalent to the Goods;
 - (ii) repair of the Goods;
 - (iii) payment of the cost of replacing the Goods or acquiring goods equivalent to the Goods; or
 - (iv) payment of having the Goods repaired;
 and where the Company elects to replace the Goods, then the Company will:
 - (v) credit the cost of the Goods being replaced, and will replace them as soon as possible with other Goods of the same or equivalent kind, at the price charged for the original Goods; and
 - (vi) provide the replacement Goods on the same terms and conditions as those pursuant to which the original Goods were supplied; and
 - (b) in the case of the Services:
 - (i) providing the Services again, or providing services equivalent to the Services;
 - (ii) payment of the cost of providing the Services again, or acquiring services equivalent to the Services;
 and where the Company elects to provide the Services again, then the Company will:
 - (v) credit the cost of the Services being provided again, and provide the Services again as soon as possible, at the price charged for the original Services; and
 - (vi) provide the Services again on the same terms and conditions as those pursuant to which the original Services were provided.
- 17.7 Subject to clause 17.1 and 17.2 of the Terms and Conditions, and despite any implication arising from any other provision of the Terms and Conditions:
 - (c) to the fullest extent permitted by law, the Company will only be liable for a safety defect (as defined in the CCA) in the Goods if:
 - (i) the Customer notifies the Company in writing of that safety defect with 5 business days after the date on which the Goods are received by the Customer; and
 - (ii) the Company accepts liability for that safety defect in writing;
 - (d) the Company is not liable to the Customer, its servants, agents or contractors:
 - (i) in contract or tort (including negligence);
 - (ii) under any statute (to the fullest extent permitted by law); or
 - (iii) otherwise for, or in respect of, any indirect or consequential loss or damage including, but not limited to financial loss or expense, including loss of opportunity, loss or profits or loss of goodwill arising directly or indirectly out of, or attributable in any way to:
 - (A) the Goods or their delivery; or
 - (B) the performance of the Contract for the sale of the Goods on the Terms and Conditions;
 even if the loss or damage was in the contemplation of the parties at the time that the Contract was entered into;
 - (e) Subject to clause 6 of the Terms and Conditions, the aggregate liability of the Company:
 - (i) in contract or tort (including negligence);
 - (ii) under any statute (to the fullest extent permitted by law); or
 - (iii) otherwise for, or in respect of, any loss or damage arising directly or indirectly out of, or in any way attributable to:
 - (A) the Goods and/or Services or the supply of the Goods and/or Services; or
 - (B) the performance of the Contract;
 will not exceed 10% of the amount payable to the Company under the Contract.
- 17.8 The Customer indemnifies the Company against any Loss that the Company suffers, incurs or is liable for in connection with:
 - (f) any breach of the Terms and Conditions;
 - (g) negligence by the Customer; or
 - (h) the Company exercising any of its rights under the Terms and Conditions.
- 17.9 The warranty only applies to products which were used as intended and in compliance to the manufacturer's user manual.
- 17.10 The Customer acknowledges that any tampering with, non-user manual complaint use or attempted repair by the Customer of the goods will void the Company's warranty.

18. The Company's Obligations

Despite any other provisions stated in the Terms and Conditions, the Company is not:

- (a) obligated to fulfill its responsibilities under the Contract if the Customer violates any term of the Contract, unless and until the Customer rectifies the breach in its entirety.
- (b) accountable for any non-compliance with its obligations under the Contract if such non-compliance is entirely or significantly caused by a force majeure event, which encompasses events beyond the Company's control. These events may include, but are not limited to, strikes, industrial actions, war, sabotage, terrorist activities, national emergencies, blockades, governmental actions, governmental inactions or requests, and acts of God.

19. Termination by the Company

Without waiving any of its rights, powers, or remedies, the Company:

- (a) may cancel any order for the supply of Goods and/or Services and terminate Contract governed by the Terms and Conditions if:
 - (i) the terms of payment for any Goods and/or Services delivered to the Customer by the Company have not been strictly adhered to by the Customer;
 - (ii) the Customer defaults under any of its obligations under the Terms and Conditions; or
 - (iii) the Customer suffers an Insolvency Event;
 and in each case, the Company will be released from all liability under the Contract;
 - (b) will be entitled to payment for all Goods and/or Services delivered up to the effective date of termination;
- and termination of the Contract under this clause will be without prejudice to any rights of the Company accruing up to the date of termination.

20. Intellectual Property

The supply of Goods and/or Services by the Company to the Customer does not constitute a transfer of any intellectual property rights in the Goods and/or Services (the **IP Rights**), and:

- (a) the Customer must not do anything that is inconsistent with, or an infringement of, the IP Rights; and
- (b) the Company does not warrant that the supply by it of the Goods and/or Services will not infringe the IP Rights of any third party.

21. Miscellaneous Provisions

- 21.1 The Contract and the Terms and Conditions are governed by and interpreted in accordance with the laws of New South Wales. The Customer agrees to submit to the jurisdiction of the courts of New South Wales and waives any right to assert that those courts are inconvenient or improper forums.
- 21.2 The:
 - (a) parties agree to execute all documents and do all other things necessary; and
 - (b) Customer agrees to cooperate and work with any third party suppliers to the Company to the extent necessary;
 to give effect to the Contract and the Terms and Conditions.
- 21.3 The Company reserves the right to engage or retain other persons or entities to supply the Goods and/or Services or any part of the Goods and/or Services.
- 21.4 The Customer may only assign its rights or novate the its rights and obligations under the Contract with the prior written consent of the Company.
- 21.5 The parties agree that:
 - (a) a provision of the Terms and Conditions, or a right created under them, may not be waived except in writing signed by the parties;
 - (b) a failure or delay by the Company to exercise a right arising under the Terms and Conditions does not constitute a waiver of that right;
 - (c) the Company's consent to a breach of the Terms and Conditions is not a consent to any subsequent breach; and
 - (d) if a provision of the Terms and Conditions is unenforceable for any reason, it will be read down to the point of severance, and any provision of the Terms and Conditions must not be construed to the Company's disadvantage because they were prepared on behalf of the Company.
- 21.6 In the Terms and Conditions, the singular includes the plural and vice versa.

22. Definitions

In the Terms and Conditions:

- (a) the **Company** means SMS SciTech Pty Ltd;
- (b) the **Customer** means any person, body corporate or entity that purchases or orders Goods and/or Services from the Company;

- (c) the **Contract** means the agreement as defined by sub-clause 2.1 of the Terms and Conditions between the Company and the Customer for the supply of the Goods and/or Services;
- (d) **High Value Transaction** means a transaction \$50,000.00 and over;
- (d) **Goods** means all goods supplied by the Company to the Customer pursuant to the Contract.
- (e) **Insolvency Event** means, in respect of either the Customer or Company (a **Party**):
 - (i) an application or order is made for the appointment of an administrator, a provisional liquidator, liquidator, official manager or receiver or receiver and manager or another external administrator in respect of that Party (and, in the case of an application only, that application is not withdrawn or dismissed within 14 days);
 - (ii) an application or order is made for the winding up of that Party, and, in the case of an application only, that application is not withdrawn or dismissed within 14 days;
 - (iii) a resolution is passed, or a meeting is convened, to consider a resolution for the winding up of that Party;
 - (iv) a receiver or manager (or both) is appointed to, or a mortgagee takes possession of, all or any part of the business or the assets of the Party;
 - (v) that Party is, or states that it is, unable to pay its debts when they fall due, or is deemed to be unable to pay its debts, or must be presumed by a court to be insolvent, under any applicable legislation;
 - (vi) that Party enters into, or resolves to enter into, any arrangement, composition or compromise with, or assignment for the benefit of, any of its creditors generally or any class of its creditors;
 - (vii) that Party proposes a reorganisation, moratorium or other form of administration involving any such arrangement, composition, compromise or assignment, or begins any negotiations for any such purpose or for the purpose of re-scheduling or re-adjusting all, or a material part, of its debts;
 - (viii) the Party is taken to have failed to comply with a statutory demand as a result of section 459F(l) of the Corporations Act;
 - (ix) an application is made or notice is issued under sections 601AA or 601AB of the Corporations Act to the Party;
 - (x) that Party takes any steps to obtain protection, or is granted protection, from its creditors under the laws of any applicable jurisdiction;
 - (xi) an external administrator is appointed to that Party over any of that Party's assets or that Party requests such an appointment;
 - (xii) that Party is deregistered in the jurisdiction in which it was registered;
 - (xiii) that Party stops, or threatens to stop, carrying on its business or a material part of it; or
 - (xiv) anything analogous or of similar effect to any of the above events occurs under the law of any applicable jurisdiction.
- (f) **Purchase Order** means the order for the Goods and/or Services that is created by the Company or created by the Customer and accepted in writing by the Company;
- (g) **Services** means all services supplied by the Company to the Customer pursuant to the Contract;
- (h) the **Terms and Conditions** means these terms and conditions for the supply of the Goods and/or Services by the Company to the Customer and amended or varied in writing by the Company from time to time.