

Portable Scientific – Business Terms and Conditions

THE PARTIES AGREE:

1. DEFINITIONS & INTERPRETATION

1.1 Definition

In this Agreement unless inconsistent with the context or subject matter the following terms have the corresponding definitions:

- (a) "ACL" means the Australian Consumer Law (as set out in Schedule 2 to the Competition and Consumer Act 2010 (Cth));
- (b) "Agreement" means this agreement consisting of these Business Terms and Conditions and any Quote;
- (c) "Applicable Laws" means any laws governing or affecting the arrangements contemplated by this Agreement;
- (d) "Claim" means any claim, action, demand or proceeding however arising (including under contract, statute, common law or equity) in respect of any Loss or alleged Loss;
- (e) "Client" means the Client identified in the Quote, and if there is more than one Client is a reference to each Client jointly and severally;
- (f) "Client's Address for Service" means the email address or address of the Client set out in the Quote;
- (g) "Delivery Address" means the delivery address of the order of Goods as set out in the Quote;
- (h) "Force Majeure" means events, circumstances or causes beyond a party's reasonable control including (but not limited to):
 - (i) strikes, lock-outs or other industrial action;
 - (ii) civil commotion, riot, invasion, cyber-attack, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war;
 - (iii) fire, explosion, storm, flood, earthquake, subsidence, epidemic, pandemic (including COVID-19), health emergencies, disease, or other natural disaster;
 - (iv) impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;
 - (v) interruption or failure of utility services (including the inability to use public or private telecommunications networks);
 - (vi) interruption of networks or third party services (including telecommunication or web services); and
 - (vii) the acts, decrees, legislation, regulations or restrictions of any government agency,however does not include a lack of funds;
- (i) "Goods" means the Goods that the Supplier agrees to supply to the Client as specified in a Quote and as otherwise agreed from time to time;
- (j) "GST" goods and services tax chargeable under the GST Law;
- (k) "GST Law" means:
 - (i) where goods and services tax is applicable in Australia: A New Tax System (Goods Tax) Act 1999 (Cth);
 - (ii) where goods and services tax is applicable in New Zealand: the Goods and Services Tax Act 1985 (NZ).
- (l) "Intellectual Property Rights" means all present and future rights conferred by law in or in relation to copyright, trade marks, designs, patents, circuit

- layouts, plant varieties, business and domain names, inventions and confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable;
- (m) "Loss" any loss, liability, cost, charge, expense, Tax, duty or damage of any nature whatsoever, including special, incidental, or consequential damages, losses or expenses (howsoever arising or caused, including, without limitation, negligence);
- (n) "Personnel" means the directors, officers, employees, contractors, suppliers, advisers or agents of a party;
- (o) "Purchase Price" means the price payable for the Goods in accordance with clause 3.2;
- (p) "Quote" means any quote provided by the Supplier to the Client;
- (q) "Supplier" means Portable Scientific Pty Ltd ABN 64 667 068 733;
- (r) "Supplier's Address for Service" means 10/16 Dellamarta Rd, Wangara WA 6065, Australia;
- (s) "State" means Western Australia, Australia;
- (t) "Tax" means any sales tax, customs duties, import tax, value added tax, duty, withholding tax, levy, impost or other charge or duty levied by any government in Australia or elsewhere, payable in respect of the supply of the Goods;
- (u) "Tax Invoice" has the same meaning as in the GST Act; and
- (v) "Term" means the term of this Agreement commencing and expiring in accordance with the terms of any Quote and this Agreement.

1.2 Interpretation

In this Agreement the following rules of interpretation apply, unless the contrary intention appears or context otherwise requires:

- (a) References to a party to any agreement or document include that party's permitted assignees and successors, including executors and administrators and legal representatives.
- (b) Words denoting the singular include the plural and words denoting the plural include the singular.
- (c) Words denoting any gender include all genders.
- (d) The word 'person' includes any individual, corporation or other body corporate, partnership, joint venture, trust, association and any government agency.
- (e) Any promise, agreement, representation or warranty given or entered into on the part of two or more persons binds them jointly and each of them severally.
- (f) Any promise, agreement, representation or warranty given or entered into on the part of two or more persons is for the benefit of them jointly and each of them severally.
- (g) No provision of this Agreement will be construed adversely to a party because that party was responsible for the preparation of that provision or this Agreement.
- (h) If a period of time begins on a given day or the day of an act or event, it is to be calculated exclusive of that day.
- (i) A reference to time is a reference to time in the capital city of the State.
- (j) A reference to a day is a reference to a day in the capital city of the State.

- (k) A reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
- (l) If any act is required to be performed under this Agreement on or by a specified day and that day is not a business day, the act must be performed on or by the next business day.
- (m) A reference to an amount of dollars, will mean a reference to Australian dollars, \$ or A\$ is a reference to the lawful currency of the Commonwealth of Australia, unless the amount is specifically denominated in another currency. If the Client is based in New Zealand, then the Client must confirm the correct currency for the sale with the Supplier.
- (n) Where this Agreement is executed for a party by an attorney, the attorney by executing it declares that the attorney has no notice of revocation of the power of attorney.
- (o) A reference to writing or written includes email.
- (p) Where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

2. APPLICATION

- 2.1 This Agreement, including any Quote will become binding on the Client upon (a) the Client indicating its acceptance to it; or (b) the Client giving instructions to the Supplier to proceed; or (c) the Client making payment of any amount (including a deposit) to the Supplier in respect of Goods.
- 2.2 This Agreement applies to all Goods supplied by the Supplier to the Client at any time following the time when this Agreement become binding on the Client.
- 2.3 The Client cannot terminate this Agreement except to the extent as expressly permitted by this Agreement.
- 2.4 Unless otherwise agreed all Quotes are valid for 30 days from the date of the quotation, and will only become binding on the Supplier when the Supplier expressly acknowledges acceptance. Any fees stated in a Quote are provided on the basis of the information current to the Supplier at the date of the invoice. The Supplier reserves the right to increase the fees where applicable in accordance with the terms of this Agreement.
- 2.5 The Client acknowledges and agrees that the supply of Goods remains subject to availability and if, for any reason the Supplier is unable to proceed with the supply, the Supplier reserves the right to cancel the order for Goods (and issue a refund for any amounts paid for the cancelled order if applicable). This is the Client's only remedy in these circumstances and the Supplier will not be liable to pay any other amount to the Client.
- 2.6 No invoice, terms or other document issued by or on behalf of the Client (including the terms on any warranty or other agreement given to the Supplier) will vary or form part of this Agreement unless otherwise agreed by the Supplier in writing. This Agreement replaces and supersedes any invoice, terms or other document given by the Client to the Supplier.
- 2.7 If a person is agreeing to this Agreement on behalf of the Client, the person agreeing on behalf of the Client warrants that it has the irrevocable authority and agreement of the Client to be bound by this Agreement.

3. SUPPLY OF GOODS

- 3.1 The Supplier and the Client agree that the Supplier will supply the Goods to the Client in accordance with the Quote and the terms of this Agreement. Details of the Goods in a Quote are subject to change at any time until the Quote has been agreed to by both parties.
- 3.2 Where Goods are made to specifications then the Client is solely responsible for ensuring the Goods are appropriate and suitable for their needs. Any additional scope agreed to by the Supplier during the production phrase will form part of

the Quote.

- 3.3 The Quote may contain additional terms which form part of this Agreement. In the event of any inconsistency between this Agreement and any Quote, the terms contained in the Quote will prevail to the extent of such inconsistency.

4. PRICING

- 4.1 The Purchase Price payable by the Client to the Supplier for the Goods is the price specified in the Quote. Pricing set out in a Quote is subject to change at any time until the Quote has been agreed to by both parties.
- 4.2 Where a Quote has been agreed to, then the Supplier reserves the right to vary the Purchase Price of the Goods by providing the Client with written notice where:
 - (a) there is any change to the specifications of the Goods or the scope of the manufacture originally agreed upon;
 - (b) there is an increase in the Supplier's costs, costs of labour or materials (including supplier price increases), or other cost bases.

Any increase in Purchase Price under this clause will apply 14 days following the date that the Supplier provides the Client with written notice of the variation. If during the 14 day notice period the Client notifies the Supplier that it rejects the variation, this Agreement, and the Customer's order for the Goods, will immediately terminate. If no notice of rejection is received from the Client during the 14 day notice period, the varied Purchase Price will apply and the Supplier will issue the Client an invoice in respect of the variation. The payment terms will be as set out on the invoice.

5. PAYMENT AND INVOICING

- 5.1 The Client agrees to pay the Purchase Price for the Goods in accordance with the payment terms specified in the Quote. If no time/s are stated in the Quote then the following payment schedule applies:
 - (a) **(deposit)** a deposit of 20% of the Purchase Price or as otherwise agreed in writing by the parties is due immediately upon accepting the Quote, and the Client acknowledges that the Supplier will not place the Client in the schedule to commence production of the Goods until payment of the deposit is received;
 - (b) **(balance payment)** the Supplier will provide a tax invoice to the Client for the payment of the balance of the Purchase Price, and the Client agrees to pay that invoice in accordance with its terms. The balance of the Purchase Price must be paid in cleared funds prior to the delivery of the Goods to the Client.
- 5.2 The Supplier will provide a tax invoice to the Client for all amounts payable by the Client at the times as specified in this Agreement. The Client acknowledges that the deposit is non-refundable to the extent permitted by law (without limitation to any other rights of the Supplier). The Client acknowledges and agrees that this is not a penalty, but a genuine estimate of the Loss suffered by the Supplier in such circumstances.
- 5.3 The Client must make all payments to the Supplier in cleared funds and by electronic funds transfer into a bank account nominated by the Supplier (or such other payment methods as approved by the Supplier). The Supplier reserves the right to charge a processing fee on certain payment methods (as applicable).
- 5.4 Unless otherwise agreed by the parties in writing, the Client must bear all other costs associated with supply of the Goods including Taxes and insurance costs. Unless otherwise stated, the Purchase Price and any other amounts payable by the Client under this Agreement are to be increased by any goods and services tax payable on the supply.
- 5.5 If payment is not made by the Client on time in accordance with this Agreement then interest will accrue daily on all outstanding monies from the due date until the date of payment at the rate of 12% per annum and the Supplier may

in its discretion:

- (a) demand payment of all money due under this Agreement to the Supplier, including that which is payable but not yet due; and/or
 - (b) refuse to supply any further part of the Goods and/or perform any further services to/for the Client until all outstanding monies, including any accrued interest, is paid in full.
- 5.6 The Client is responsible for all international payment fees, conversion fees and bank fees and charges.
- 5.7 The Supplier may set-off and deduct from the sums due to the Client pursuant to any agreement any sums (whether liquidated or not) owed by the Client to it, irrespective of whether the liability to pay those sums arose under or in connection with the Agreement.
- 5.8 The Client agrees to pay to the Supplier, immediately on demand, on a full indemnity basis, all amounts that the Supplier may, at its absolute discretion, expend or incur (including legal costs on a solicitor and own client basis) as a result of the Client defaulting on any of the terms of this Agreement.
- 5.9 The Client may not withhold payment or make any deduction from any amount owing without the Supplier's prior written consent, irrespective of any claim the Client may have against the Supplier.

6. DELIVERY

- 6.1 The Supplier will endeavour to process the Client's order and deliver the Goods to the Delivery Address within any timeframes as set out in the Quote (or otherwise agreed) however any timelines for delivery are estimates only and shall not be binding on the Supplier and subject to change without notice. The Supplier endeavours to process and deliver the Goods on time, however cannot guarantee the Goods will be delivered by such delivery dates. The Client must still accept delivery of the Goods even if late and the Supplier will not be liable for any Loss or damage incurred by the Client as a result of the delivery being late
- 6.2 The Client must pay all costs associated with the delivery and insurance (during transit) of the Goods as specified in the Quote. The Client must make payment of such costs at the same time as payment for the relevant Goods is made or at another time as directed by the Supplier.
- 6.3 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this Agreement. In the event the Client gives the Supplier authority to leave the Goods at the Delivery Address, the Supplier will not be responsible for any lost or stolen Goods in the event that they are delivered to the Delivery Address (regardless of whether the Client or its Personnel were available to collect it).
- 6.4 The Client must take delivery by receipt of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage. Where this occurs, the Supplier will store the Goods at the risk of the Client until delivery takes place again.
- 6.5 The Supplier may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions of this Agreement.

7. MANUFACTURER'S WARRANTY

7.1 12 Month Warranty

- (a) The Goods come with a manufacturer's warranty which is offered by the manufacturer. The manufacturer's warranty covers manufacturing defects to the Goods for a period of 12 months from the date the Goods are delivered (**Warranty Period**). The Supplier will handle all manufacturer warranty claims in accordance with this clause.

- (b) The manufacturer's warranty provided under this clause is subject to additional manufacturer's warranty terms as included with each Product.
- (c) In order to make a claim under this clause the Client must inspect the Goods immediately on their delivery and must provide notice of any defective Goods:
 - (i) in the case of a defect that is apparent on normal visual inspection within one business day of receipt; or
 - (ii) in the case of a latent defect, within a reasonable time of the latent defect having become apparent and within the Warranty Period.
- (d) Upon such notification of defective Goods, the Client must provide any photographic evidence requested by the Supplier; and allow the Supplier to inspect the Goods supplied to determine whether they are defective.
- (e) The Supplier reserves the right to have their service agent assess the condition of the Goods before providing any remedy. For some Goods that the Supplier cannot assess themselves, the Supplier may arrange for the Goods to be sent to the manufacturer for assessment. In these circumstances, depending on the Goods, please be aware that it may take several weeks to complete this process.
- (f) If the Client is aware or ought reasonably to be aware that the Goods are defective for any reason, then the Client must take all necessary steps to mitigate any Loss. The Client must not attempt to repair any Goods itself except where directed by the Supplier in writing. Any replacement of parts or repairs to the Goods must be authorised by the Supplier and must be performed by the Supplier or a certified third-party. Any unauthorised fitting of parts or accessories to the equipment will not be covered by warranty.
- (g) If the Supplier is notified of a defective Good and agrees it is defective (acting reasonably) then the Supplier will at its election either:
 - (i) provide a replacement of the defective Goods to the Client; or
 - (ii) repair the defective Goods,unless a full refund is required by law.
- (h) This warranty covers trained use of the Goods. The Client acknowledges that the Goods must be operated by duly trained operators or technicians in a safe and reasonable manner and in accordance with the manufacturer's instructions. Goods must be used for the purpose for which they were intended. Using the Goods for any other purpose or in any other manner will render this warranty null and void
- (i) Subject to the terms of this clause, the Goods will only be dealt with in accordance with this clause provided that:
 - (i) the Client has complied with the other terms of this clause;
 - (ii) the Supplier has agreed (in its reasonable opinion) that the Goods are defective;
 - (iii) the Goods are returned (if necessary) as soon as possible to the Supplier; and
 - (iv) the returned Goods (if necessary) are accompanied by all original delivery documentation.
- (j) Notwithstanding any other clause in this Agreement, to the extent permitted by law the Supplier will not be liable for or required to provide any remedy for any defect or damage:

- (i) where such defect or damage is caused or partly caused by or arises as a result of:
 - A. the Client's acts or omissions, including the Client failing to take reasonable steps to prevent them from becoming defective or the Client failing to properly use, assemble, install, service or maintain the Goods in accordance with the Supplier's or the manufacturer's instructions or best industry practice or any other obligations set out in this Agreement;
 - B. the Client's continued use after discovering fault;
 - C. any third party actions including (without limitation);
 - D. the Supplier following any instructions supplied by the Client;
 - E. the Goods not being stored or otherwise used in accordance with the Supplier's instructions;
 - F. the Goods being subject to abnormal conditions including without limitation harsh environments, corrosive environments, exposure to heat, temperature, pressure, stress, fire and/or exposure to moisture or high humidity;
 - G. misuse, abuse, wilful damage, negligence, or abnormal storage or working conditions, fair wear and tear or normal deterioration of weathering from the elements;
 - H. any event, accident or circumstance outside the reasonable control of the Supplier;
- (ii) where the Goods have been repaired, altered or modified by someone else other than the Supplier or an authorised repair agent of the Supplier or repaired within the consent of the Supplier;
- (iii) where the Goods have been used for a purpose apart from the purpose for which it was designed and manufactured;
- (iv) where such damage is a normal maintenance that is the Client's responsibility;
- (v) where unauthorised parts or accessories have been used with the Goods;
- (vi) where any damage caused by exposure to air pollution, harmful chemicals;
- (vii) where the damage is to the packaging.
- (k) The Client is solely responsible for ensuring that the provision of the Goods are suitable or adequate for its purposes.

7.2 Additional warranties

Additional warranties may be purchased. Any additional warranties will be subject to the terms set out therein.

7.3 Exclusion of liability

Notwithstanding any other clause in this Agreement, the Supplier will only be responsible for defects in the Goods and Goods that the Supplier supplies.

7.4 Australian Consumer Law

If the Client is a 'consumer' within the meaning of the ACL, then for the Goods:

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the

goods fail to be of acceptable quality and the failure does not amount to a major failure.

This limited express warranty is in addition to any rights the Client may have under the ACL.

7.5 General

- (a) The warranty noted under this clause is provided to the original purchaser only and may not be transferrable.
- (b) Any refunds provided under this clause will be issued to the same payment method which was used for the purchase and will be processed within 3 weeks of confirmation that the conditions of refund have been met.

7.6 Exclusion of liability

Notwithstanding any other clause in this Agreement, the Supplier will only be responsible for defects in the Goods and components that the Supplier supplies. To the extent permitted by law the Supplier will not be liable for or required to provide any remedy for:

- (a) any components or materials supplied by the Client or a third party;
- (b) any services carried out by third parties.

8. WARRANTIES

8.1 The Client warrants to the Supplier that as at the date of this Agreement and for the duration of this Agreement:

- (a) the Client is not entering this Agreement as trustee for any trust (unless disclosed);
- (b) it has the legal right and power to enter into this Agreement;
- (c) the execution, delivery and performance of this Agreement by the Client has been duly and validly authorised by all necessary corporate action on its part;
- (d) this Agreement is a valid and binding Agreement on the Client, enforceable in accordance with its terms;
- (e) the Client is not bankrupt or insolvent and no receiver, liquidator, administrator or receiver and manager has been appointed over any part of its assets and no such appointment has been threatened;
- (f) no proceedings have been brought or threatened for the purpose of bankrupting or winding up the Client;
- (g) no partner, director or shareholder of the Client is bankrupt, a discharged bankrupt or in any form of receivership, administration or liquidation; and
- (h) it has the capacity to make the payment in accordance with this Agreement.

9. TERMINATION & CANCELLATION

9.1 The Supplier may cancel all or part of any order to which this Agreement applies by providing written notice to the Client. On giving such notice the Supplier will refund any amounts paid with respect to such Goods to the extent of the Supplier's failure to supply. This is the sole remedy available to the Client. The Supplier shall not be liable for any Loss or damage whatsoever arising from such cancellation.

9.2 Without limiting clause 9.1 the Supplier may also in its absolute discretion, by written notice to the Client, immediately terminate this Agreement (and shall have no liability for any Loss suffered by the Client due to the termination):

- (a) if the Client fails to make payment of any amount due under this Agreement on time or otherwise in accordance with this Agreement;
- (b) if the Client becomes insolvent; commits an act of bankruptcy or is made bankrupt; makes a composition or other arrangement with creditors; assigns assets for the benefit of creditors generally; being a company, if the Client enters into a deed of company arrangement or has a controller,

administrator, receiver or receiver and manager appointed; being a company, if the Client goes into liquidation; being a partnership, if the Client has a receiver or a receiver and manager appointed; or

- (c) if the Client breaches any term of this Agreement or a Quote and fails to rectify the breach within 7 days of being given a notice to do so; or
 - (d) in the event of Force Majeure (such as if there are issues with the weather and the Supplier is unable to supply the agreed Services, however the Supplier is not bound to terminate if this occurs).
- 9.3 The Client may not cancel an order to which this Agreement applies at any time except where the Supplier consents to such cancellation in writing (which it may withhold its consent in its absolute discretion) or whether expressly permitted by this Agreement.
- 9.4 The Client may terminate this Agreement if the Supplier breaches a material term of this Agreement and fails to rectify the breach within a reasonable time (being not less than 14 days) of being given a notice to do so. For the avoidance of doubt, the Supplier will not be considered to be in breach of this Agreement due to delays in manufacturing or delivery or changes to the Goods which are within scope or reasonable given industry standards.
- 9.5 The rights and remedies of the parties contained in this clause 9 are in addition to any other rights and remedies by law, in equity or under this Agreement.
- 9.6 The expiration or termination of this Agreement will not prejudice any accrued rights or liabilities of either party, nor excuse either party from a breach of this Agreement occurring prior to expiration or termination of this Agreement.
- 9.7 Subject to the other terms of this clause and any applicable laws, upon termination of the Agreement, except where expressly specified in this Agreement, the Client shall not be entitled to any refund and will be liable to pay to the Supplier for all Goods supplied, or ready to be supplied, by the Supplier under the Agreement up until the date of termination and any other amounts still owing by the Client to the Supplier and such amounts shall be a debt immediately due and owing.
- 9.8 The termination of a Quote does not affect any other Quote/s which shall continue.

10. OWNERSHIP & RISK

- 10.1 Notwithstanding anything to the contrary express or implied in this Agreement, the parties agree that the Supplier retains full title to the Goods and title will not at any time pass to the Client until the Purchase Price for the Goods and all other amounts owing in respect of the Goods are paid to the Supplier.
- 10.2 The risk of loss of, or damage to the Goods passes to the Client on the delivery of the Goods to the Client's nominated Delivery Address.

11. INTELLECTUAL PROPERTY

- 11.1 The Client acknowledges that the Supplier (or the relevant licensor) shall retain all title, interest and rights (including Intellectual Property Rights) which subsist in or which may be obtained from the following:
- (a) any material the Supplier creates which is based upon or derived from any Intellectual Property Rights owned by or licensed to the Client or is made to the design or at the direction of the Client;
 - (b) the Goods (including without limitation any drawings, layouts, finishes, structural details and reports); and
 - (c) any additional or further intellectual property created, formulated or discovered during the Term by either party in connection with the Goods (including anything incidental to the above mentioned drawings, layouts, details and documents),
(collectively the "the Supplier IP").
- 11.2 The Client will promptly sign all documents and do all things

necessary to register, vest or transfer any interest or ownership in such additional or further intellectual property to the Supplier.

- 11.3 In the event the Supplier provides the Client with access to the Supplier IP, the Supplier grants the Client a revocable, non-exclusive, non-assignable or transferable licence to use the Supplier IP solely for the purpose of fulfilling its obligations under this Agreement during the Term. The Client must not use the Supplier IP to build any vehicle.

12. INDEMNITY AND RELEASE

- 12.1 Except as provided under this Agreement and to the extent permitted by law the Client releases the Supplier and its officers, employees and agents from any and all Claims by the Client or any of its Personnel or invitees, except to the extent (if any that) the Loss the subject of the Claim is caused by the negligent or fraudulent act or omission of the Supplier.
- 12.2 Except to the extent caused or contributed to by breach of this Agreement by the Supplier, the Client indemnifies the Supplier against, and holds the Supplier harmless from, any Losses (including any direct, indirect, special or consequential Losses) and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses suffered or incurred by the Supplier arising out of or in connection with:
- (a) the Client's breach or negligent performance or non-performance of this Agreement, including any failure to pay any fees on time;
 - (b) any claim made against the Supplier or the Client by a third party arising out of or in connection with:
 - (i) the supply of the Goods and/or this Agreement;
 - (ii) the Client's use of the Goods; or
 - (iii) defective Goods,to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by, or is attributable to the acts or omissions of, the Client or the Client's Personnel;
 - (c) any reliance by the Client or a third party on the Goods or any advice, information or deliverable provided in connection with the provision of the Services and/or this Agreement (except for reliance on information contained in this Agreement);
 - (d) the enforcement of this Agreement;
 - (e) any defect in, or problem caused by, work materials or equipment supplied by the Client;
 - (f) any problem caused by or contributed to by any modifications to the Goods made by the Client;
 - (g) any defect or injury caused or contributed to by a failure of the Client (as well as any Personnel or service provider engaged by the Client or any other third party) to follow any procedure recommended by the Supplier or by the manufacturer of any materials used by the Supplier in the Goods; and
 - (h) any claim made against the Supplier by a third party for death, personal injury or damage to property arising out of or in connection with the Goods to the extent that the claim is attributable to the acts or omissions of the Client (including without limitation by the misuse of the Goods by the Client as well as any Personnel or service provider engaged by the Client or any other third party);
 - (i) any act, omission or wilful misconduct of the Client (as well as any staff member, agent, contractor or service provider engaged by the Client or any other third party).
- 12.3 The Client must make payments under this clause:
- (a) in full without set-off or counterclaim, and without any deduction in respect of taxes unless prohibited by law; and

- (b) in the currency in which the payment is due, in immediately available funds.
- 12.4 The indemnities in this clause:
- (a) are continuing obligations of the Client, independent from its other obligations under this Agreement and survive termination or expiry of this Agreement; and
 - (b) are absolute and unconditional and unaffected by anything which otherwise might have the effect of prejudicing, releasing, discharging or affecting the liability of the Client.

13. LICENSING DISCLAIMER

- 13.1 The Client acknowledges that the Client may be required to hold a specific licence, registration or permit for use of the Goods as required by Applicable Laws in the Client's jurisdiction. This includes for example X-Ray instruments.
- 13.2 The Client is solely responsible for obtaining such valid licence, registration or permit for use of the Goods, and for compliance with Applicable Laws with respect to use of the Goods. The Supplier will not be responsible for:
- (a) obtaining any licence, register or permit for use of the Goods by the Client; or
 - (b) registering the Goods for such on behalf of the Client.

14. GENERAL DISCLAIMER

- 14.1 The Supplier supplies the Goods on an "as is" basis and without any warranties, representations, or conditions of any kind, whether express, implied or statutory, to the extent permitted by law. The Client relies on the Goods at its own risk.
- 14.2 Without limiting the other terms of this clause, the Client acknowledges and agrees that:
- (a) any advice, recommendation, information, assistance or service provided by the Supplier in relation to the Goods supplied is given in good faith, is based on the Supplier's own knowledge and experience and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods. Such advice, recommendations, information and assistance is followed or acted upon entirely at the Client's own risk, and accordingly the Supplier shall not be liable for any such advice or recommendation;
 - (b) the Supplier reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory or regulatory requirements or, where the Goods are to be supplied to the Supplier's specification, which do not materially affect their quality or performance;
 - (c) Goods supplied may exhibit variations in shade, colour, texture, surface, finish and may fade or change colour over time.
- 14.3 The only warranties and representations that the Supplier makes in respect of the Goods are those set out in this Agreement. The Client acknowledges and agrees that the Supplier has not made any other representations in respect of the Goods.

15. EXCLUSION AND LIMITATION OF LIABILITY

- 15.1 Subject to the other terms of this Agreement, the Supplier excludes all rights, representations, guarantees, conditions, warranties, undertakings, remedies or other terms in relation to the Goods that are not expressly set out in this Agreement to the maximum extent permitted by law.
- 15.2 Without limiting the generality of clause 15.1, the Supplier expressly excludes any liability in contract, tort or otherwise for any injury, damage, Loss, delay or inconvenience caused directly or indirectly by:

- (a) any act or omission of the Client or its Personnel, including any delay caused by the Client or its Personnel;
 - (b) any problem caused by misuse, abuse, wear and tear or abnormal movement; and
 - (c) any defect in, or problem caused by, materials or goods supplied by the Client or its Personnel.
- 15.3 Subject to the other terms of this clause, the Supplier's maximum aggregate liability to the Client for any loss or damage or injury arising out of or in connection with the supply of Goods or services under this agreement, including any breach by the Supplier of this agreement however arising, under any indemnity, in tort (including negligence), under any statute, custom, law or on any other basis, is limited to the actual charges paid by the Client under this agreement in the 3-month period preceding the matter or event giving rise to the claim.
- 15.4 Nothing in this Agreement is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of Part 5-4 of the ACL, or the exercise of a right conferred by such a provision, or any liability of the Supplier in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of Goods or services.
- 15.5 If the Supplier is liable to the Client in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL that cannot be excluded, the Supplier's total liability to the Client for that failure is limited to, at the option of the Supplier, the replacement of the Goods or the supply of equivalent Goods, or the repair of the Goods, or the payment of the cost of replacing the Goods or of acquiring equivalent Goods, or the payment of the cost of having the Goods repaired.
- 15.6 Without limitation to the other terms of this Agreement, the Supplier excludes any liability to the Client, whether in contract, tort (including negligence) or otherwise, for any special, indirect or consequential loss arising under or in connection with this Agreement, including any loss of profits, loss of sales or business, loss of production, loss of agreements, loss of business opportunity, loss of or damage to goodwill or reputation.
- 15.7 Notwithstanding anything else in this clause, the Supplier's liability will be reduced to the extent the loss or damage is caused by or contributed to by the Client or the Client's Personnel.
- 15.8 The Supplier will not be liable for any claim under or in relation to or arising out of this Agreement including a breach of any warranty unless:
- (a) the Client has first made a claim under any insurance policy held by the Client that may cover that claim; and
 - (b) that claim has been denied in whole or partly by the relevant insurer.
- 15.9 If the Client recovers any amount under an insurance policy in respect of a claim under or in relation to or arising out of this Agreement and that amount is less than the loss or damage incurred by the Client, the amount of the shortfall will be the amount of the Client's loss for the purposes of this Agreement.

16. NO ASSIGNMENT

- 16.1 The Client must not transfer or assign its rights under this Agreement to anyone else, without the prior written consent of the Supplier, which may be granted or withheld by the Supplier in its sole, absolute and unfettered discretion. The Client must provide any information the Supplier requires to consider whether to grant its consent.
- 16.2 The Client acknowledges and agrees that the Supplier may transfer, assign or otherwise dispose of its interest in this Agreement upon giving written notice to the Client.

17. NOTICES

- 17.1 All notices authorised or required under this Agreement to be

- given by a party to the other shall be in writing sent by email or delivered personally or sent by pre-paid registered post and in each case addressed to the other party at that party's Address for Service or as the case may be at such other address as a party may from time to time notify to the other.
- 17.2 The following shall constitute proof of receipt:
- (a) proof by posting by registered post; or
 - (b) proof of dispatch by email.
- 17.3 Receipt of a notice given under this Agreement will be deemed to occur:
- (a) in the case of a communication sent by pre-paid registered post, on the third business day after posting;
 - (b) in the case of an email, on the business day immediately following the day of dispatch.
- 17.4 If a notice is sent via post, it must also be sent via email.

18. GST

18.1 Definitions

Words used in this clause 18 that have a defined meaning in the GST Law have the same meaning as in the GST Law unless the context indicates otherwise.

18.2 GST

- (a) Unless expressly stated otherwise, the consideration for any supply under or in connection with this Agreement is exclusive of GST.
- (b) To the extent that any supply made under or in connection with this Agreement is a taxable supply (other than any supply made under another agreement that contains a specific provision dealing with GST), the amount payable by the recipient is the consideration provided under this Agreement for that supply (unless it expressly includes GST) plus an amount (additional amount) equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply.
- (c) The recipient must pay the additional amount at the same time as the consideration to which it is referable, and upon the issue of an invoice relating to the supply.
- (d) Whenever an adjustment event occurs in relation to any taxable supply to which clause 18.2(b) applies:
 - (i) the supplier must determine the amount of the GST component of the consideration payable; and
 - (ii) if the GST component of that consideration differs from the amount previously paid, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.

19. GENERAL

19.1 Variation

An amendment or variation of any term of this Agreement must be in writing and signed by each party.

19.2 No Waiver

- (a) No party may rely on the words or conduct of any other party as being a waiver of any right, power or remedy arising under or in connection with this Agreement unless the other party or parties expressly grant a waiver of the right, power or remedy. Any waiver must be in writing, signed by the party granting the waiver and is only effective to the extent set out in that waiver.
- (b) Words or conduct referred to in clause 19.2(a) include any delay in exercising a right, any election

between rights and remedies and any conduct that might otherwise give rise to an estoppel.

19.3 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument. A party may execute this Agreement by signing any counterpart. The date on which the last counterpart is executed is the date of this Agreement. Communication of the fact of execution to the other parties may be made by sending evidence of execution by email.

19.4 Severability

- (a) If the whole or any part of a provision of this Agreement are or becomes invalid or unenforceable under the law of any jurisdiction, it is severed in that jurisdiction to the extent that it is invalid or unenforceable and whether it is in severable terms or not.
- (b) Clause 19.4(a) does not apply if the severance of a provision of this Agreement in accordance with that clause would materially affect or alter the nature or effect of the parties' obligations under this Agreement.

19.5 No Merger

On completion or termination of this Agreement, the rights and obligations of the parties set out in this Agreement will not merge and any provision that has not been fulfilled remains in force.

19.6 Survival

Any clause which by its nature is intended to survive termination or expiry of this Agreement will survive such termination or expiry.

19.7 Further Action

Each party must do all things (including completing and signing all documents) reasonably requested by the other party that are necessary to give full effect to this Agreement and the transactions contemplated by this Agreement.

19.8 Time of the Essence

Time is of the essence in this Agreement in respect of any date or time period and any obligation to pay money.

19.9 Relationship of the Parties

Nothing in this Agreement gives a party authority to bind any other party in any way. Nothing in this Agreement imposes any fiduciary duties on a party in relation to any other party.

19.10 Remedies Cumulative

Except as provided in this Agreement and permitted by law, the rights, powers and remedies provided in this Agreement are cumulative with and not exclusive to the rights, powers or remedies provided by law independently of this Agreement.

19.11 Entire Agreement

This Agreement states all the express terms agreed by the parties about its subject matter. It supersedes all prior agreements, understandings, negotiations and discussions in respect of its subject matter.

19.12 No Reliance

No party has relied on any statement, representation, assurance or warranty made or given by any other party, except as expressly set out in this Agreement.

19.13 Governing Law and Jurisdiction

This Agreement is governed by the law in force in the State. Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in the State and courts of appeal from them in respect of any proceedings arising out of or in connection with this Agreement.