

# BFT AUSTRALIA

## TERMS AND CONDITIONS OF TRADE

26 August 2022



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# BFT AUTOMATION AUSTRALIA PTY LTD

## Terms & Conditions of Trade

### Definitions

**"Australian Consumer Law"** means Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*.

**"Company"** means BFT Automation Australia Pty Ltd ACN 125 405 030.

**"Customer"** means the party placing the Order with or purchasing Products or Services from the Company.

**"Force Majeure Event"** means: war, act of war, act of terrorism, strikes, pandemic or epidemic virus, disease or other illness, infectious diseases, quarantines or other viral outbreaks, transport disruptions, shortages of water, electricity, gas, raw materials or the supply of other consumables, acts or omissions of any government, natural disaster, accidents or any other event outside of the reasonable control of the parties.

**"Intellectual Property Rights"** means any patent, registered design, patent, trademark, copyright, trade secret or any other proprietary right of a third party or parties, registered or unregistered, in any country.

**"Order"** means an offer by a Customer to purchase Products or acquire Services from the Company.

**"PPS Act"** means the *Personal Property Securities Act 2009 (Cth)* and its associated Regulations as varied from time to time.

**"PPSR"** means the Personal Property Securities Register established under the PPS Act.

**"Products"** means automatic doors and gates including garage doors, roller shutters, tilting doors, boom gates, swinging gates and sliding gates and includes any other products ordered by the Customer from the Company or supplied by the Company on the Order of the Customer.

**"Services"** means the manufacture, supply, installation and servicing of Products and any other services ordered by the Customer from the Company.

**"T&Cs"** means these Terms & Conditions of Trade as varied and applicable from time to time.

**"Writing"** includes quotes, letters, fax, email and other similar electronic communication methods.

### 1 Sale Terms

**1.1** The T&Cs apply to all supplies by the Company to the Customer in respect of all Products and/or Services including all Orders or other sales and will prevail over all prior conditions previously agreed between the parties.

**1.2** The T&Cs may be amended from time to time by the Company by notice to the Customer. The amended T&Cs will apply to any Order or part of an Order from the date on which the Company notifies the Customer of that change.

### 2 Order and Acceptance

**2.1** Any Order submitted to the Company by a Customer will be deemed to be made pursuant to the T&Cs. Any Order placed or made by the Customer for the purchase of the Products will be an irrevocable offer and will constitute an unqualified acceptance by the Customer of the T&Cs.

**2.2** The Company may accept any Order in whole or in part by providing confirmation of the Order. Acceptance may be oral, by conduct or in Writing at the Company's discretion.

**2.3** Delivery by the Company of Products or Services pursuant to an Order made by the Customer (whether by single or multiple delivery) will be taken as acceptance by the Company of the Order to the extent Products or Services are delivered.

**2.4** Accepted Orders may not be varied or cancelled by the Customer without the Company's written consent and (subject to the conditions set out herein including clause 16.2) there is no right of return.

### **3 Price**

- 3.1** The price of the Products or Services will be as agreed between the parties and where there is no written confirmation of the price, the price will be the amount usually charged by the Company for Products or Services of that kind or that indicated on invoices provided by the Company to the Customer regarding Products or Services ordered. The Company reserves the right to issue an amended invoice in the case of genuine error on its part in confirmation, quotation, or invoicing.
- 3.2** The Company reserves the right to increase the price of the Products, by giving at least one (1) month's prior notice to the Customer (Notice Period). Subject to this prior notice being given, and for Products not yet shipped but subject to an Order Acceptance issued under clause 2.2, the Company may increase the price, to take into account any significant increase in the cost of raw materials, metals, fuels, or other production related costs (New Price). The New Price will take effect immediately upon the expiry of the Notice Period and apply to the relevant Products specified in the Order Acceptance, unless the Customer cancels the Order Acceptance in Writing prior to the expiry of the Notice Period in accordance with clause 3.3.
- 3.3** The Customer may cancel the Order Acceptance but only in respect of the Products to which the New Price applies and not the entire Order Acceptance which will remain binding on the Customer.
- 3.4** The Company may charge in addition to the price of the Products an amount for delivery and handling at rates dependent on distance and volume of Products supplied. The rates to be applied will be the Company's usual rates for matters or services of that kind or if there are no such usual rates then reasonable rates. The Company's usual rates are subject to change from time to time. The Company will not charge any fees in addition to the price of the Products for Orders collected from the Company's nominated address.
- 3.5** Any discount or rebate will only apply if the Customer and the Company agree in Writing.

### **4 Credit granting and payment**

- 4.1** The Company may accept an Order and allow credit for part or all of its value or may accept an Order and require pre-payment as a condition of delivery.
- 4.2** Credit approval once granted may be withdrawn at any time. Where credit approval has not been granted, or is withdrawn, payment for all Products supplied is required before delivery (cash or cleared funds). Where credit has been approved for the Customer, all invoices issued by the Company are due and payable by the date for payment agreed in Writing by the Customer and the Company, but if no agreement in Writing is made, then thirty (30) days from the date of the invoice provided by the Company to the Customer regarding Products ordered.

### **5 Credit Policy and Default**

- 5.1** In the event that the Customer fails to make any payment payable pursuant to the T&Cs within the payment terms or breaches any of the warranties, obligations or agreements, the Customer will be in default of the T&Cs.
- 5.2** The Company may charge interest on all amounts not paid by the Customer by the time required for payment at a rate of 1.5% per calendar month calculated from the due date and accruing monthly thereafter until the date of payment.
- 5.3** If the Customer defaults in payment of any invoice due and payable, the Customer must reimburse and indemnify the Company from and against all expenses, costs and disbursements incurred by the Company in pursuing the debt including all reasonably charged legal costs on a "solicitor and own client" basis and the fees charged to the Company by any mercantile agency. If the Customer fails to pay any amount by the due date, the Company may at its sole discretion:
  - (a) cancel any provision of credit to the Customer;
  - (b) reverse any rebates or discounts allowed;

- (c) change credit payment terms including by requiring cash pre-payment for any further Products ordered;
  - (d) provide details of the payment default to a credit reporting agency;
  - (e) commence legal proceedings against the Customer (and any guarantors) for all outstanding amounts, interest and costs;
  - (f) decline to supply Products and/or Services to the Customer and terminate this and any other agreement with the Customer; and
  - (g) exercise any other rights at law including pursuant to the PPS Act.
- 5.4** A certificate of debt signed by a representative of the Company will be prima facie evidence and proof of money owing by the Customer to the Company at the time of the certificate.
- 5.5** To the full extent permitted by law, the Customer shall also indemnify the Company and keep the Company indemnified from and against any liability and any loss or damage the Customer may sustain, as a result of any breach, act, or omission, arising directly or indirectly from or in connection with any breach of any of these Terms or an Order of Acceptance by the Customer or its representatives.
- 5.6** All down or deposit payments made are non-refundable on cancellation of an Order except for cancellation by the Company under clause 20.2.

## **6 GST**

- 6.1** Words used in this clause 6 that are defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning as in that Act unless the context indicates otherwise.
- 6.2** Unless expressly included all amounts of consideration expressed or described in any quotation or agreement the subject of the T&Cs are GST exclusive. The Customer must pay an additional amount equal to any applicable GST. The additional amount must be paid when the other consideration is payable or at any earlier time that the Company is obliged to pay or allow credit for the GST.
- 6.3** Whenever an adjustment event occurs in relation to any taxable supply to which clause 6.2 applies:
- (a) The supplier must determine the amount of the GST component of the consideration payable; and
  - (b) 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; and
  - (c) The supplier will issue an Adjustment Note to the recipient.
- 6.4** If either party is entitled under an agreement the subject of the T&Cs to be reimbursed or indemnified by the other party for a cost or expense incurred in connection with such agreement, the reimbursement or indemnity payment must not include any GST component of the cost or expense to the extent that the cost or expense is the consideration for a creditable acquisition made by the party being reimbursed or indemnified, or by its representative member.
- 6.5** If GST is payable on any taxable supply made by one party (Supplier) to another (Recipient) under an agreement the subject of the T&Cs, then the Recipient will not be required to pay any amount to the Supplier in respect of that taxable supply unless it has first received a tax invoice from the Supplier.

## **7 Delivery**

- 7.1** Delivery of the Products is deemed to have taken place when:
- (a) the Customer takes possession of the Products at the Company's address; or
  - (b) the Products are delivered by the Company or the Company's nominated carrier to the Customer's nominated address; or
  - (c) the Customer's nominated carrier takes possession of the Products in which event the carrier will be deemed to be the Customer's agent.

- 7.2** The Customer's nominated address is the address specified in the Commercial Account Application Form or otherwise notified in Writing by the Customer to the Company from time to time.
- 7.3** Delivery of the Products must not be refused by the Customer after an Order has been accepted by the Company. Where prices are stated as inclusive of delivery, delivery is to the delivery point nominated by the Customer and accepted by the Company.
- 7.4** The Customer must make all arrangements necessary to accept delivery of the Products at the Customer's nominated address.
- 7.5** Delivery of Products to a third party or address nominated in any way by the Customer is deemed to be delivery to the Customer pursuant to the T&Cs.
- 7.6** The Company will not be liable to the Customer for any loss or damage or expense arising from failure by the Company to deliver the Products at a specified time, promptly or at all and the failure of the Company to deliver at a specific time or at all will not entitle the Customer to treat an agreement the subject of the T&Cs as repudiated.
- 7.7** A Proof of Delivery ("POD") document signed by the Customer or anyone appearing to act on its behalf will be deemed confirmation by the Customer that the delivery of Products is in accordance with the Customer's Order.

## **8 Export Control**

- 8.1** The importation and resale of the Products by the Customer are carried out solely by the Customer and the Customer shall ensure that the importation and resale are not in any way a violation of the laws and regulations in force in the country of importation or resale of the Products.
- 8.2** If the Customer transfers products (hardware and/or software and/or technology as well as corresponding documentation, regardless of the mode of provision) delivered by the Company to a third party, the Customer shall comply with all applicable national and international (re-)export control regulations.
- 8.3** In any event of such transfer of products, the Customer shall comply with the (re-)export control regulations of the European Union, the United States of America and Australia.
- 8.4** Prior to any transfer of Products supplied by the Company to a third party, the Customer shall in particular check and ensure that:
  - (a) There will be no infringement of an embargo imposed by the European Union, by the United States of America, by Australia and/ or by the United Nations by such transfer, by brokering of contracts concerning those Products or by provision of other economic resources in connection with those Products also considering the limitations of domestic business and prohibitions of by-passing those embargos;
  - (b) Such Products are not intended for use in connection with armaments, nuclear technology or weapons, if and to the extent such use is subject to prohibition or authorization, unless required authorization is provided; and
  - (c) The regulations of all applicable sanctioned party lists of the European Union, the United States of America and Australia concerning the trading with entities, persons and organizations listed therein are considered.
- 8.5** It is the Customer's responsibility to bear all costs associated to make the Products, their accessories and packaging compliant with the laws and regulation of the importing country. The Customer is liable for the sales, marketing, and distribution of the Products in the country of importation and will carry out in full compliance with the laws and regulations in force in that country.
- 8.6** Under no circumstances will the Company be liable for any failure or violation of the laws and regulations in force in the country of importation as a result of the importation, distribution and/or marketing of the Products in that country by the Customer. The Customer indemnifies the Company, its subsidiaries and/or any related company (as defined in the Corporations Act 2001) against all

claims, losses and expenses resulting directly or indirectly from the Customer's violation or breach of the laws of the importing country in relation to the importation, sale, supply, distribution, and marketing of the Products in that country.

## **9 Credit Card recovery of costs**

**9.1** A service fee sufficient to cover the Company's administration and banking costs may be added by the Company to the price where payment by the Customer is made by way of a credit card.

## **10 Risk and Retention of Title to the Products Pending Payment**

**10.1** The risk (but not title) in respect of Products sold passes to the Customer immediately upon delivery to the Customer, the Customer's agent or courier as the case may be.

**10.2** Legal and beneficial ownership of the Products will remain with the Company and will not pass to the Customer until the Company has received in full (cash or cleared funds) all sums due to it in respect of the Products and all other sums which are, or which may become due to the Company from the Customer on any credit or other account (including for Services) with the Company or pursuant to these T&Cs.

**10.3** Until ownership of the Products has passed to the Customer, the Customer will keep the Products in question as fiduciary agent and bailee for and on behalf of the Company.

**10.4** If:

- (a) the Customer fails to pay any amount (whether in part or whole) payable in respect of any Products by the time required for payment; or
- (b) the Customer is the subject of an insolvency event (such as receivership, administration or liquidation);

the Company may, without notice to the Customer, enter at any reasonable time any premises where Products are located (or believed by the Company to be located) and take possession of those Products not paid for and any other Products to the value of the amount owing. The Company's permission to enter the Customer's premises for that purpose is irrevocable. The Company is not liable to the Customer in contract, tort or otherwise, for any costs, damages, expenses or losses incurred by the Customer as a result of any action taken by the Company under this clause.

## **11 PPS Act**

**11.1** Words in *italic* will have the meaning and definitions set out in the PPS Act.

**11.2** The Customer acknowledges that by virtue of the T&Cs the Company has a *security interest* in the Products and their *proceeds* and to the extent applicable, the PPS Act applies to any agreement pursuant to the T&Cs.

**11.3** The Customer acknowledges that the Company may do anything it considers necessary, including but not limited to registering on the PPSR any security interest in the Products which the Company has and including registration as a *purchase money security interest* (PMSI) in order to *perfect* the Company's security interest as a first priority interest under the PPS Act. The Customer agrees to do all things including signing any document which the Company reasonably requires to assist the Company to undertake the matters set out above.

**11.4** The Customer waives pursuant to section 157(3)(b) of the PPS Act the right to receive notice of a *financing statement*, *financing change statement* or a *verification statement* in relation to any registration on the PPSR.

**11.5** The Customer and the Company agree, that pursuant to section 115 of the PPS Act the following provisions in the PPS Act are contracted out of insofar as they require the Company to give any notice or statement or allow any period of time or grant any opportunity to remedy to the Customer:

- (a) sections 95 (removal of accession), 96 (retention of accession);
  - (b) section 125 (obligation to dispose of or to retain collateral);
  - (c) section 129 (disposal by purchase);
  - (d) section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor before disposal;
  - (e) subsection 132(4) (statement of account if no disposal);
  - (f) section 135 (notice of retention);
  - (g) section 142 (redemption of collateral);
  - (h) section 143 (reinstatement of security agreement).
- 11.6** Solely to preserve their confidentiality, to the extent allowed under section 275 of the PPS Act, the Customer and Company agree that neither will disclose information if requested by a third party under section 275(1) of the PPS Act.
- 11.7** The Customer agrees that any rights of the Company under this document are in addition to and not in substitution for its rights under the PPS Act.
- 11.8** The Customer must not without the Company's consent specify an order of application of payments made to the Company different to that set out in section 14 of the PPS Act or different to any other order specified by the Company at any time.
- 11.9** The Customer undertakes to give the Company not less than 14 days prior notice of any proposed change in the Customer's name or any other change in the Customer's details (including, but not limited to, changes in its address, phone or facsimile number and trading name).

## **12 Claims, Returns and Product Recall:**

- 12.1** Refunds or returns will only be given to the extent there is a non-excludable right to return or refund under the Australian Consumer Law or other applicable legislation.
- 12.2** Subject to clause 16.2:
- (a) the Customer must inspect and check all Products received and within 7 days of receipt notify the Company in Writing of any shortage in quantity, defect, incorrect specification, damage, or Products not in accordance with the Customer's Order. The Customer is responsible for checking that Products correspond with those ordered prior to use. After use or expiry of the time stated herein the Products will be deemed to be free from any defect or damage at delivery;
  - (b) the Customer agrees that it will not return any of the Products without first informing the Company. Returned Products must be unmarked, in a saleable condition and must include the original packaging, accessories, delivery document and invoice; In addition, the Company will accept returns only within 30 days of receiving the Products;
  - (c) no credit or replacement will be given unless and until Products so returned have been verified as being valid for return or are defective. The Company reserves the right to recover its costs where the returned Products prove not to be valid for return or are not defective. Returned Products must be returned to the Company to the address notified by the Company to the Customer from time to time;
  - (d) all freight, handling, and other charges in relation to returning Products (other than Products not ordered or found to be defective) are the responsibility of the Customer. Where the freight, handling, and other charges in relation to a returned product are the responsibility of the Company:
    - (i) the Company must authorise those costs in Writing to the Customer prior to the Customer returning those Product(s) to the Company; or

- (ii) the Company may elect to collect the Products from the Customer or nominate its own carrier.

**12.3** The Company will notify the Customer as soon as reasonably practicable if a recall of the Products is required (whether mandatory or voluntarily initiated by the Company). The Customer will provide such assistance to do things as reasonably requested by the Company in relation to the recall.

### **13 Intellectual Property**

**13.1** The supply of Products or Services to the Customer does not grant the Customer any intellectual property rights in or related to the Products or the Company's or any supplier's trademarks, all of which remain the exclusive property of the Company or the supplier.

**13.2** The Customer will only use the Products for the purpose for which they were designed or supplied by the Company.

**13.3** Any use of the Products, the Company's trademarks and more generally of any element belonging to the Company (text, logo, photography, visual element, etc.) that is not expressly permitted under these T&Cs constitutes infringement of the Company's intellectual property rights unless specifically authorized by the Company in Writing.

**13.4** The Company may give its prior Written consent regarding the use of its trademarks, logos and/or visuals for the purpose of the Customer promoting the resale of the Company's Products. In this case, the Customer undertakes to comply with any requirements or directions provided by the Company to make faithful and loyal reproductions of the marks, logos, and visuals transmitted by the Company and not to create any risk of confusion between the Company and any third party.

**13.5** The Customer will not infringe the intellectual property of the Company in any way, and undertakes, among other things, not to damage the Company's brand image, trademarks, domain names, range names, products or services used by and/or owned by the Company. Customers who are aware of any infringement of the intellectual property rights of the Company must immediately inform the Company in Writing and provide any information in its possession relating to the infringement.

**13.6** Within the limits permitted by law, the Company will not be liable to the Customer and/or third parties for any claim that the Products infringe any intellectual property rights of a third party.

### **14 Disputed Charges**

**14.1** If the Customer objects to any invoiced item or amount, the Customer may withhold payment of the disputed amount, but only if on or before payment or the due date for payment (whichever occurs first), the undisputed amount of the invoice is paid in full and notice in Writing of the dispute is given to the Company, setting out the details of the amount disputed, the reasons for the dispute, and the basis for calculating the disputed amount.

**14.2** The Company will investigate all disputes. If the amount is found to be payable (in whole or in part) then the Customer must pay the due amount within 7 days of receiving notice and the basis of the decision.

**14.3** Invoiced amounts that are not objected to in Writing within 30 days of the due date will be deemed to be correctly charged and accepted by the Customer and the Customer waives all claims against the invoice.

### **15 Warranty**

**15.1** The Customer warrants to the Company that the Customer is acquiring the Products for the purpose of:

- (a) re-supply; or



- (b) using the Products up or transforming them, in trade or commerce:
  - (i) in the course of a process of production or manufacture; or
  - (ii) in the course of repairing or treating other goods or fixtures on land.

**15.2** Products purchased from the Company are covered by the Company's standard warranty described in this clause 15. The Customer's benefits under this standard warranty are in addition to other rights and remedies the Customer has under law in relation to the Products to which the Company's standard warranty relates. The terms of the Company's standard warranty are as follows:

- (a) The Company warrants that Products purchased from the Company will be free of defects in workmanship and materials for the warranty periods listed in clause 15.3 (**Warranty Period**).
- (b) During the Warranty Period (calculated from the date of manufacture), if the Company is satisfied that a Product is defective in materials or workmanship the Company will repair or replace (at the Company's option) the faulty Product.
- (c) If a faulty Product cannot be repaired, or an identical Product is not available at the time of repair or replacement, the Company reserves the right to replace any faulty Product with a Product of similar quality. Repair or replacement of the Product or a part does not extend or restart the relevant Warranty Period;
- (d) This warranty only applies to defects which have arisen solely from faulty materials or workmanship;
- (e) In order to make a claim under the warranty contained in this clause 15, the Customer must accompany the returned Products with a transport document setting out the following information:
  - (i) the product code;
  - (ii) a detailed description of the Product; and
  - (iii) the quantity of Products being returned.
- (f) To the full extent permitted by law, the warranty under this clause 15 does not apply if:
  - (i) the fault arises from a system not being installed in accordance with the instructions provided by the Company;
  - (ii) components which are not original Company parts have been used for installing the motorization;
  - (iii) Products have been altered, broken or damaged due to misuse, tampered with in any way or the fault arises from repairs carried out by persons other than authorised representatives of the Company;
  - (iv) the fault arises from normal wear and tear, accident and/or neglect;
  - (v) damage caused during transit of the Products to the Customer's nominated delivery address;
  - (vi) the failure arises from factors beyond the Company's control such as electrical discharges, accidental tampering, accidental impact, exposure of the Products to moisture, steam, extreme environmental or heat conditions, floods, or other natural disasters.

**15.3** All Products manufactured by the Company have a warranty period of 30 months calculated from the date of manufacture. The date of manufacture is shown on the Product in the form of an impressed code or an applied adhesive label. Counterfeiting or deleting the date of manufacture will void the warranty under this clause 15.

**15.4** If there is any inconsistency between the terms of the warranty contained in this clause 15 and any provision contained in any other document provided by the Company to the Customer (including any catalogues or promotional material), the terms of this clause 15 will prevail.

## **16 Disclaimer and Limitation of Liability**

- 16.1** Subject to clause 16.2 and except as expressly provided in the T&Cs or as set out in the Company's acceptance, and to the fullest extent permitted by law, no guarantee, warranty, condition, undertaking or term, express or implied, statutory or otherwise, as to the condition, quality, performance, aesthetic appearance, merchantability or fitness for purpose of any Products or Services provided pursuant to the T&Cs is given or assumed by the Company and all such guarantees, conditions, warranties and liabilities (including liability as to negligence) express or implied relating to such Products or Services are hereby excluded.
- 16.2** The Company acknowledges that certain legislation in Australia, including the Australian Consumer Law, provides guarantees and rights which cannot be excluded, restricted, or modified or which may in certain cases only be modified or restricted to a limited extent. Nothing in these terms and conditions excludes, restricts, or modifies, or is intended to exclude, restrict, or modify, any guarantee, condition, warranty, right or liability implied by law (including any guarantee, condition, right or liability imposed under the Australian Consumer Law) to the extent it cannot lawfully be excluded, restricted, or modified.
- 16.3** Subject to clause 16.2 and to the fullest extent permitted by law, the liability of the Company in respect of a breach of a guarantee, condition or warranty implied by legislation (other than any non-excludable implied guarantees, conditions or warranties), including liability for any consequential loss which the Customer or any other entity or person may sustain or incur, will be limited, at the Company's option, to:
- (a) if the breach relates to supply of goods:
    - (i) the provision of a refund;
    - (ii) replacement of the goods;
    - (iii) repair of the goods; or
    - (iv) the payment to the Customer of the reasonable cost of having the goods repaired or replaced.
  - (b) if the breach relates to services:
    - (i) the provision of a refund; or
    - (ii) re-supply of the services; or
    - (iii) the payment to the Customer of the reasonable cost of having the services re-supplied.
- 16.4** The Customer acknowledges and agrees that in entering into an agreement the subject of the T&Cs it has not relied in any way on the Company's representations and that it has satisfied itself as to the suitability of the Products for the Customer's purposes.
- 16.5** Subject to clause 16.2, and to the full extent permitted by law the Company will not be liable to the Customer for any loss or damage including loss of profits or any other indirect or consequential loss or damage, arising directly or indirectly, and whether or not as a result of negligence, in any way in respect of anything done or supplied under the T&Cs including:
- (a) the supply to or use by the Customer of any Product; or
  - (b) delayed or non-delivery of the Products for any reason including but not limited to loss, damage, theft of the Products whilst in transit; or
  - (c) any breach by the Company of its obligations under an agreement the subject of the T&Cs.

## **17 PRODUCTS FOR "PROFESSIONALS"**

- 17.1** The Company markets eight families of Products: (1) gate openers, (2) garage door openers, (3) traffic barriers, (4) rising bollards, (5) parking systems, (6) automatic glass door openers, (7) interconnectivity solutions, and (8) accessories (Professional Products).
- 17.2** The Customer recognises and acknowledges that the range of Professional Products is constituted by mechanical, electromechanical, electric, electronic products, software and their accessories,

whose manufacture, marketing, installation and maintenance are, in the majority of cases, subject to specific rules; therefore, their distribution and installation requires a specialist Professional, who provide to end users full information on the technical and operational characteristics of the Professional Products, their correct installation and safety of use in accordance with applicable laws and regulations. The Customer indemnifies the Company against any third-party claim, loss or damage suffered by or resulting from the Customer's failure to ensure that the Professional Products are distributed and installed by a specialist Professional.

**17.3** To ensure that the Professional Products are sold or supplied to Professionals only, the Customer will, and procure that its employees, agents, and contractors will:

- (a) only re-sell or re-supply Professional Products through an online platform or website dedicated to the sale of the Professional Products to Professionals only; and
- (b) at all times request evidence from the purchaser confirming that the purchaser is a Professional and that the distribution and installation of the Professional Products will be undertaken by the purchaser for re-supply In Trade only.

**17.4** The Customer will provide the Company with all information requested by the Company in order for the Company to monitor compliance with this clause 17.

## **18 Confidentiality**

**18.1** As part of their commercial relationship, the Customer acknowledges and agrees that it may have access to certain information relating to the Company, the Products, such as technical data sheets or customs codes, relating to or arising from the T&Cs or an Order, which are not in the public domain (Confidential Information). The Customer, its managers, employees, subcontractors, and agents shall keep all Confidential Information confidential. Documents, data, and information of any nature whatsoever provided by the Company shall remain the property of the Company and may not be disclosed or used for purposes other than the performance of the T&Cs or the Order without the prior Written consent of the Company.

**18.2** In case of doubt as to the confidential nature of any information provided by the Company, it is the Customer's responsibility to seek confirmation about the nature of the information provided or disclosed from an authorized representative of the Company.

**18.3** The Company reserves the right to require the Customer's employees or managers to whom the Company's Confidential Information is disclosed to sign a written confidentiality undertaking.

## **19 Returned Cheques**

**19.1** An administration fee of \$55 including GST plus all associated bank charges may be applied to any cheque payment returned unpaid by the bank for whatever reason. This fee may increase without notice to cover the Company's expenses and costs.

## **20 Foreign currency**

**20.1** Payments must be made in Australian dollars. Payments remitted in foreign currency must include all related bank charges and currency conversion costs both on the payment and receiving end.

## **21 Set-off and assignment**

**21.1** The Customer is not entitled to set off against or deduct from the price of Products sold any sums owed or claimed to be owed to the Customer by the Company.

**21.2** The Customer must not assign or subcontract any contract for the purchase of Products or its rights or obligations under an agreement the subject of the T&Cs without the prior written consent of the Company.

## **22 Force Majeure**

The Company will have no liability to the Customer in relation to any loss, damage or expense caused by the Company's failure (partial or otherwise) to comply with its obligations under the T&Cs arising as a result of a Force Majeure Event.

- 22.1** In the event that a Force Majeure Event continues, or is reasonably expected to continue, for a period of three (3) consecutive months, the Company may cancel any affected Order Acceptance if the Company cannot supply or fulfil an order as a result of the Force Majeure event without any liability to the Customer. This shall be the parties' sole remedy in respect of any Force Majeure Event.

## **23 Privacy consent**

**23.1** The Company may give information to third parties about the Customer, its guarantors, directors, or proprietors for the following purposes:

- (c) to obtain a consumer credit report about the Customer, its guarantors, directors or proprietors;
- (d) to allow the credit reporting agency to create or maintain a credit information file containing information about the Customer, its guarantors, directors or proprietors;
- (e) for registration on the PPSR or other public records or registers; and
- (f) to obtain commercial credit information about the Customer, its guarantors, directors or proprietors from a credit reporting agency.

## **24 Waiver of terms of agreement**

**24.1** The failure or indulgences by the Company to exercise, or delay in exercising, any right, power, or privilege available to it under an agreement the subject of the T&Cs will not operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any right or power and the Company is entitled to require strict compliance at all times.

## **25 Proper Law**

- 25.1** An agreement the subject of the T&Cs is governed by and will be construed in accordance with the laws of the State of New South Wales, Australia.
- 25.2** The parties agree to submit to the non-exclusive jurisdiction of the Courts of the State of New South Wales. If the Local Court has jurisdiction the parties consent to the non-exclusive jurisdiction of the Local Court closest to the Company's place of business.
- 25.3** An agreement formed pursuant to the T&Cs will be deemed to have been entered into at the Company's place of business.

## **26 General provisions**

- 26.1** This document represents the entire agreement between the parties and no agreement or understanding varying or extending the terms of the T&Cs will be legally binding upon either party unless in Writing and signed by both parties or allowed by the T&Cs.
- 26.2** Neither party excludes or limits the application of any statute (including but not limited to the *Competition and Consumer Act 2010* (Cth) (CCA) as amended from time to time and its schedule 2, the Australian Consumer Law), where to do so would contravene that statute or cause a provision of these Terms to be void. Any stated exclusion or limitation in this Terms is only to the full extent permitted at law.
- 26.3** These Terms are to be construed in accordance with the laws from time to time in the State of New South Wales and the Commonwealth of Australia. The parties submit to the non-exclusive jurisdiction of the Courts of New South Wales, Australia and any courts which may hear appeals from those courts in respect to any proceedings in connection with these Terms.
- 26.4** The Company may serve any notice or Court document on the Customer by hand or by forwarding it by post to the address of the Customer last known to the Company, or where a fax number or an email address has been supplied by the Customer, by sending it to that number or address. Such notices will be deemed to be given:

- (a) where delivered by hand, on the day of delivery;
- (b) where sent by post, two (2) business days after the day of posting; and
- (c) where sent by facsimile or email on the day of dispatch, provided that a clear transmission report is obtained.

- 26.5** If any term of an agreement the subject of the T&Cs will be invalid, void, illegal or unenforceable, it will be severed from the agreement and the remaining provisions will not be affected, prejudiced, or impaired by such severance.
- 26.6** The Company may assign or license or subcontract all or any part of its rights and obligations under the T&Cs without the Customer's agreement or consent.
- 26.7** If the Customer sells or otherwise disposes of its business (or any part thereof) (**Disposal**), the Customer must immediately notify the Company in Writing of such Disposal to enable the Customer's account to be closed. If the Customer fails to notify the Company of such Disposal, then the Customer will be jointly and severally liable with the third party acquiring the business (or part thereof) to the Company for the payment of Products subsequently sold to the third party on the Customer's account before the Company received such notice as if the Customer had ordered the Products itself.



OUR CORE VALUES:  
GROWTH - SUPPORT - INNOVATION

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Be ahead