

Terms and Conditions of Sale

1. OUTLINE

- 1.1 **Currency:** These terms and conditions of sale (**Terms**) apply to the supply of all Goods and Services by us to you from the date that you accept these Terms.
- 1.2 **Acceptance:** You accept these Terms when:
- 1.2.1 you submit an Order;
 - 1.2.2 you accept delivery of, or any part of, the Goods and Services of an Order; or
 - 1.2.3 you make Payment, or partial Payment, for any Goods and Services supplied by us, whichever occurs first.

2. QUOTES + ORDERS

- 2.1 **Requesting a Quote:** You may request a Quote from us relating to the potential supply of Goods and Services.
- 2.2 **Providing a Quote:** We may provide you a Quote for the potential supply of Goods and Services. The Quote may include the price and quantity of the Goods and Services proposed to be supplied by us and other relevant details.
- 2.3 **Validity of Quote:** A Quote is valid for 30 days only. We reserve the right to withdraw a Quote at any time before you place an Order.
- 2.4 **Placing an Order:** If our Quote is acceptable to you, you may place an Order for the supply of Goods and Services. An Order is not binding until we have provided you in our absolute discretion our written acceptance of the Order.
- 2.5 **Additional conditions:** Unless otherwise agreed by us in writing, these Terms will prevail over, and we will not be bound by, any conditions (express or implied) added or provided by you.

3. PRICE

- 3.1 **Price:** Unless we otherwise agree in writing and subject to clause 3.2, the price charged and payable for the Goods and Services shall be the price in Australian dollars at the date we provide the Quote. Any applicable taxes, charges, delivery, installation and incidental costs in relation to the Goods and Services will be payable by you in addition to the price.
- 3.2 **Variation of price:** Prices in any Quote for the supply of Goods or Services are based on the costs prevailing and the specifications supplied at the time of the Quote. Subject to your rights under law, we may (acting reasonably) vary prices, including if:
- 3.2.1 there is any movement in the cost of supplying the Goods or Services specified in your Order, including any Charges; or
 - 3.2.2 the Goods or Services specified in your Order are varied from the Goods or Services specified in our Quote.
- 3.3 **Imported goods:** Prices for imported goods charged to you shall be the price of those goods charged to us (including any relevant Charges, transportation, freight and insurance costs) converted into Australian dollars using exchange rate applied to us or such other rate as we reasonably determine.

4. PAYMENT + CREDIT

- 4.1 **Invoice on delivery:** Unless we otherwise agreed, we will issue you an Invoice upon delivery of the Goods or Services specified in your Order.
- 4.2 **Payment terms:** You must make all Payments in full within 30 days from the date of our Invoice or the time period as we may otherwise indicate to you in writing and from time to time based on our assessment of your credit worthiness. Any applicable early payment discounts must be agreed by us in writing.
- 4.3 **Payment method:** You must make all Payments by direct credit to the bank account nominated by us.
- 4.4 **Information:** You acknowledge and agree that for us to establish your credit worthiness, we may require you to provide financial statement and other related financial statistical information to enable us to determine relevant financial indicators such as cash flow measurement, liquidity measurements and solvency measurements.
- 4.5 **Credit:** We may at our discretion grant you a credit limit in accordance with our credit management policy and our determination of your creditworthiness.
- 4.6 **Bank Guarantee:** You acknowledge and agree that you must provide to us a bank guarantee or other collateral as we may determine is appropriate in the circumstances where we grant you a credit limit.
- 4.7 **Changes:** We reserve the right at our discretion to change the amount of credit available to you or your payment terms, including without limitation if we consider that your credit worthiness has changed for any reason.
- 4.8 **Credit limit:** Unless we otherwise agree in writing, you must not exceed the credit limit granted to you in accordance with these Terms.
- 4.9 **Revocation of credit:** We reserve the right to revoke at any time any credit extended to you because of your failure to make any Payment when due or for any other reason.
- 4.10 **Accounts:** We may provide to you a credit account statement monthly or as we may otherwise indicate to you in writing.

5. PAYMENT DEFAULT

- 5.1 **Consequences:** If you fail to make a Payment in accordance with clause 4, without otherwise limiting our rights, we may in our absolute discretion:
- 5.1.1 charge Default Interest at the rate of 12% per annum or such other amount that we may prescribe from time to time;
 - 5.1.2 cease supply of any and all relevant Goods and Services until all Payments have been made in full;
 - 5.1.3 modify any credit limit or payment terms applicable to you;
 - 5.1.4 apply any bank guarantee, security or collateral towards any outstanding amounts; and/or
 - 5.1.5 terminate any Order and these Terms.
- 5.2 **Payment of Default Interest:** Default Interest pursuant to clause 5.1 shall be:
- 5.2.1 payable on demand; and

- 5.2.2 calculated daily from the due date to the actual date the Payment is made in full.
- 5.3 **Costs of enforcement:** We may recover from you any costs we incur to collect any Payment.
- 5.4 **No set off:** You may not set off against any Payment any claims which you may have against us.
- 5.5 **Default Interest amount credited first:** Any Payment you make to us shall first be credited against any Default Interest accrued pursuant to this clause 5 to the actual date of Payment.

6. DELIVERY, RISK + INSURANCE

- 6.1 **Delivery:** Delivery of the Goods and commencement of the Services (as applicable) occurs when we deliver of the Goods to you, your agent or nominee or to a carrier commissioned on your behalf and/or commence the Services at the place specified by you (as applicable), or as otherwise agreed.
- 6.2 **Cost of delivery:** We may charge you the cost of delivering the Goods to you, which will be included in the Payment. You must pay for any further costs after the Goods have been Delivered.
- 6.3 **Instalments:** We reserve the right to make deliveries in instalments and these Terms shall be severable as to such instalments, in which case Payment for each instalment is a condition precedent to subsequent instalments.
- 6.4 **Risk passes on delivery:** The risk in the Goods shall pass to you upon the delivery of the Goods in accordance with clause 6.1.
- 6.5 **Site safety:** You must ensure the Delivery location or your premises are otherwise suitable, ready and safe for the Delivery of the Goods and the commencement of the Services (as applicable).
- 6.6 **Insurance over Goods:** You must from the delivery date until we have received Payment for all Goods in full, insure the Goods for their full replacement value and provide to us upon our request evidence of such insurance.
- 6.7 **No liability for delay:** We will use reasonable efforts to deliver the Goods to you and commence the Services (as applicable) by the date and to the place specified by you. Without limiting clause 9, if the Delivery of the Goods and/or Services is delayed or you do not comply with clause 6.5 to our satisfaction:
- 6.7.1 we may at your cost take any necessary action to remedy the delay or non-compliance;
 - 6.7.2 we shall not be liable for late delivery or delay in delivery; and
 - 6.7.3 the delay does not give you the right to cancel an Order or terminate these Terms.

7. SUSPENSION + CANCELLATION

- 7.1 **Suspension of Order:** If as a consequence of your instructions we delay or suspend (but not cancel) an Order or any part of an Order for a period of 14 days or more, we may:
- 7.1.1 request the payment in full for all work in progress relating to the relevant Order at the time of suspension;
 - 7.1.2 vary the price for the uncompleted portion of the relevant Order; and/or
 - 7.1.3 cancel your Order.

- 7.2 **Cancellation by you:** You may not cancel an Order, or any part of it, unless:
- 7.2.1 we give our written consent; and
 - 7.2.2 you pay to us (if required by us in our absolute discretion) any and all costs reasonably incurred by us in relation to the cancelled Order or the cancelled part of the Order to the date of cancellation.
- 7.3 **Cancellation by us:** We may in writing and at our discretion suspend cancel an Order or delivery of an Order without liability to you if:
- 7.3.1 we reasonably form the opinion that you are insolvent or at material risk of insolvency;
 - 7.3.2 we determine your credit worthiness is unsatisfactory or that you would not be able to make a Payment on time;
 - 7.3.3 you fail to make a Payment on time; or
 - 7.3.4 we reasonably form the opinion that supplying Goods or Services to you may have a negative impact upon our business or commercial reputation or image.

8. DEFECTS + RETURN OF GOODS

- 8.1 This clause 8 is subject to clause 9, clause 10 and any other statutory or legal right whether under these Terms or otherwise.
- 8.2 **Returns:** You must inspect the Goods immediately upon Delivery or otherwise within 1 week of receipt of the Goods and may only return the Goods if:
- 8.2.1 they do not materially comply with the Order; or
 - 8.2.2 if permitted by law, including the ACL.
- 8.3 **Deemed acceptance:** You will be deemed to have accepted the Goods if:
- 8.3.1 you do not notify us within the time period specified in clause 8.2;
 - 8.3.2 you put the Goods to commercial use; and/or
 - 8.3.3 you fail to respond to our declaration for acceptance (if any).
- 8.4 **Notification:** If you wish to return any Goods delivered to you, you must give to us:
- 8.4.1 notice within a reasonable time of your receipt of the Goods; and
 - 8.4.2 the original Invoice details.
- 8.5 **Replacement or credit:** If we accept the return of Goods from you, we will at our option either:
- 8.5.1 replace the returned Goods; or
 - 8.5.2 give a credit or a refund for such Goods.
- 8.6 **Costs to return Goods:** Unless otherwise permitted by law, you must pay for any transportation costs to return the Goods to us.
- 8.7 **Payment for other Goods:** You may not withhold any payment due to us in respect of any other Goods pending the resolution of a return.
- 8.8 **Non-payment of account:** We will not accept notifications under clause 8.4 if there are any amounts outstanding from you.
- 8.9 **Goods damaged in transit:** If the Goods are damaged while being delivered to you, subject to your compliance with this clause 8, we will replace the relevant Goods.

9. EXCLUSIONS + LIMITATIONS

- 9.1 **Excluded rights:** All express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise), relating to these Terms, that are not contained in it, are excluded to the fullest extent permitted by law
- 9.2 **Limitations:** No warranty is given and we will not be liable for:
- In the case of Goods*
- 9.2.1 alterations to Goods for which we are not responsible;
 - 9.2.2 damage or failure caused by unusual or non-recommended use, misuse or application of the Goods; or
 - 9.2.3 loss caused by any factors beyond our control; and
- In the case of Services*
- 9.2.4 interference with our Services for which we are not responsible;
 - 9.2.5 damage or loss caused by unusual or non-recommended use of our Services; or
 - 9.2.6 loss caused by any factors beyond our control.
- 9.3 **Indirect loss:** We will not be liable for any special, indirect, consequential or economic loss or damage or loss of profits (in contract or tort or arising from any other cause of action) suffered by you or any other person resulting from any act or omission by us (including breach, termination or non-observance of the terms of an Order or agreement which incorporates these Terms).
- 9.4 **Total liability:** Our total liability for breach of these Terms or breach of our contractual obligations or duties at law or in equity (however arising) is limited at our option to:
- In the case of Goods*
- 9.4.1 the replacement of the Goods or the supply of equivalent goods;
 - 9.4.2 the repair or rectification of the Goods;
 - 9.4.3 the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
 - 9.4.4 the payment of the cost of the repair or rectification of the Goods; and
- In the case of Services*
- 9.4.5 the supply of the Services again; or
 - 9.4.6 the payment of the cost of having the Services supplied again.
- 9.5 **No reliance:** You agree that:
- 9.5.1 you have and will make your own assessment of the fitness for purpose and suitability of any Goods or Services supplied to you;
 - 9.5.2 you do not and will not rely on our skill or judgment nor that of any person by whom any prior arrangements in relation to the acquisition of any Goods or Services were or will be made; and
 - 9.5.3 you have not made nor will make known to us or a manufacturer of goods (directly or indirectly) the particular purpose for which you acquire Goods or Services.
- 9.6 **Third party work:** If we obtain goods or services from a third party in order to carry out your instructions or complete an Order:
- 9.6.1 we will not be liable for any breach of these Terms if that breach is as a result of or is

- connected with the supply by a third party of such goods or services;
 - 9.6.2 we acquire such goods or services as agent for you not as principal and will have no liability to you in relation to the supply of these goods or services;
 - 9.6.3 any claim by you in relation to the supply of such goods or services must be made directly against that third party; and
 - 9.6.4 you must pay for such goods or services from the third party plus the cost of or relevant fee for us performing such services as agent for you (whether separately identified or not).
- 9.7 We give no warranty in respect of any goods or services that are supplied or carried out or provided to you by a third party even where forming part of an Order. Any warranties or other rights will be governed by the terms of supply by that provider to you and relevant laws.

10. STATUTORY RIGHTS

- 10.1 **Statutory rights:** Certain statutory guarantees, warranties and rights may apply to your purchase of Goods and Services from us as provided by relevant laws but subject to these Terms as applicable and where permitted by relevant laws.
- 10.2 **No restriction:** Nothing in these Terms excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified.
- 10.3 **Unfair contract:** If section 23 of the ACL applies to any provisions in these Terms, any such provision(s) shall be void to the extent it is unfair within the meaning of section 24 of the ACL.

11. TITLE

- 11.1 **Subject to the PPSA:** The provisions of this clause 11 are subject to the provisions of the PPSA and clause 12.
- 11.2 **Title:** We will retain absolute title over the Goods until:
- 11.2.1 we have received Payment in full in respect of the Goods; or
 - 11.2.2 the Goods are disposed of in the manner prescribed under clause 12.10.
- 11.3 **Identification:** Until full title in the Goods has passed to you, you will ensure that:
- 11.3.1 any identifying plate, mark or packaging number on any of the Goods is not removed, defaced or obliterated; and
 - 11.3.2 the Goods are identifiable and distinguishable from any other goods that may be in your possession and as to each particular Invoice of Goods.

12. SECURITY INTEREST

- 12.1 **Security Agreement:** This clause 12 sets out the Security Agreement between you (as **grantor**) and us (as **secured party**).
- 12.2 **Creation of Security Interest:** You grant to us a security interest (**Security Interest**) in the Goods supplied by us to you, including all related proceeds (**Collateral**), as security for all or part of the Payment of any amount relating to the Goods in accordance with these Terms or otherwise. For the avoidance of doubt, this Security Interest is also a Purchase Money Security Interest in the Collateral.

12.3 **Ranking:** Subject to the priority rules set out in the PPSA, this Security Interest ranks in priority ahead of all other security interests in the Collateral.

12.4 **Perfection:** You irrevocably give us authority to register a financing statement for the Security Interest on the PPSR. This clause does not prevent us from perfecting this Security Interest by any other means in accordance with the PPSA.

12.5 **Information:** You must provide us with any information required for us to register a financing statement or a financing change statement for this Security Interest on the PPSR.

12.6 **Identification:** Until this Security Interest has been extinguished, you must ensure that, as far as is reasonably practicable:

12.6.1 any identifying plate, mark or packaging number on any of the Collateral (including Goods) is not removed, defaced or obliterated; and

12.6.2 the Collateral is identifiable and distinguishable from any other goods or products in your possession and as to each particular Invoice of Goods comprising the Collateral.

12.7 **Accessions:** You acknowledge that this Security Interest continues to apply to Collateral that becomes an accession to other goods.

12.8 **Remedies:** Until this Security Interest in the Collateral has been extinguished, if:

12.8.1 you experience a Default Event; or

12.8.2 you breach these Terms,

we may as we see fit and without notice to you, seize, retain or redeem the Collateral, or seek any and all remedies provided under Chapter 4 of the PPSA or any other remedies provided at law or in equity, including those set out in clause 12.9.

12.9 **Right of entry:** In addition to any rights given to us under Chapter 4 of the PPSA, you irrevocably:

12.9.1 grant us the right to:

A demand the immediate return of the Goods to us;

B enter your premises to search for and seize the Goods without notice or liability to you; and

C retain, sell or otherwise dispose of those Goods in any manner we see fit; and

12.9.2 indemnify and us keep indemnified against any claim (including in negligence) in respect of any damage to your property or the premises you occupied or any consequential loss caused by another party arising relating to searching for and seizing any Goods in accordance with this clause 12.9.

12.10 **Permitted use and sale:** You may only sell or deal with any of the Collateral (including accessions) in respect of which full Payment has not been received if you obtain our consent.

12.11 **Costs:** You must pay all costs incurred by us (including costs on a solicitor-client basis and debt collector's costs) arising out of this Security Agreement, including costs in relation to:

12.11.1 seizure, retention, redemption or any other remedy exercised pursuant to this Security Agreement; and

12.11.2 the enforcement of our rights under this Security Agreement (including matters incidental to it).

12.12 **Extinguishment:** The Security Interest is extinguished only if all obligations under this Security Agreement have been satisfied.

12.13 **Waiver:** Sections 95, 118, 121(4), 125, 130, 132 and 135 of the PPSA shall not apply to the extent that they impose obligations on us.

12.14 **Waiver of receipt of statements:** You irrevocably waive your right to receive from us a copy of any financing statement, financing change statement or verification statement that is registered, issued or received at any time in relation to this Security Agreement.

12.15 **Disclosure:** The parties agree that neither party may disclose information that:

12.15.1 can be requested under section 275(1) of the PPSA (subject to any exceptions that may apply under section 275(7) of the PPSA); or

12.15.2 is protected against disclosure by a duty of confidence.

12.16 **Acknowledgement:** You acknowledge due notice of this Security Agreement with acceptance of these Terms.

13. INTELLECTUAL PROPERTY

13.1 **Our intellectual property:** All of our Intellectual Property Rights in and relating to the production, development and supply of the Goods or Services, including but not limited to illustrations, specifications and other literature remains our property.

13.2 **Limited licence:** We grant to you a non-transferrable, non-exclusive, revocable limited licence to use our Intellectual Property Rights in respect of the Goods and Services for the sole purpose of your use of the Goods and Services in accordance with this Agreement.

13.3 **Infringement:** You must inform us immediately if you become aware of any third party intellectual property infringement claim in relation to our Intellectual Property Rights.

13.4 **Confidentiality:** You must keep confidential and shall not use any of our confidential information without our prior written consent.

14. TERMINATION

14.1 **Termination:** If a Default Event occurs:

14.1.1 we may, without limiting any other right we have under these Terms, terminate any outstanding Order and any contract for the supply of Goods and Services to you; and

14.1.2 all Payments and any other monies due under these Terms become immediately payable.

14.2 **Effect:** Termination under this clause does not affect our rights or remedies that may have accrued prior to termination.

14.3 **Survival:** Any indemnity, obligation of confidence or any other term by its nature intended to survive termination of this Agreement is independent and survives that termination.

15. GST

15.1 **Prices exclusive of GST:** Unless otherwise agreed, prices with respect to any taxable supply are exclusive of GST.

15.2 **GST payable in addition:** You must pay to us all GST in addition to any other amounts payable by you to us in respect of a taxable supply, which will be payable by you when required to pay for the Goods or Services.

15.3 **Issue of tax invoice:** We will issue a tax invoice for any taxable supply to you, which will enable you, if permitted by the GST Law, to claim a credit for GST paid by you.

16. DISPUTE RESOLUTION

16.1 **CISG:** The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

16.2 The parties will use their best efforts to negotiate in good faith and settle any dispute that may arise out of or relate to this Agreement or any breach of it (**Dispute**).

16.3 If a Dispute cannot be settled amicably through ordinary negotiations between representatives of the parties, the Dispute shall be referred to the management of each party who will meet in good faith to try and resolve the dispute.

16.4 All negotiations connected with the Dispute will be conducted in complete confidence and on a without prejudice basis.

16.5 If the Dispute remains unresolved after thirty (30) days from the commencement of such negotiations referred to in clause 16.2, either party may take any further action they see fit, including to commence legal proceedings to resolve the Dispute.

16.6 Nothing in this clause 16 prevents a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief.

17. COMPLIANCE WITH LAWS

17.1 You are responsible for compliance with all laws and the requirements of all governmental authorities applicable to you in relation to the import, export, promotion, labelling, packaging, distribution, sale of Goods and servicing of instruments. This includes but is not limited to laws concerning:

17.1.1 hazardous material and waste handling;

17.1.2 environmental protection;

17.1.3 personal information and data protection;

17.1.4 insider trading;

17.1.5 corrupt and unethical practices; and

17.1.6 unfair competition.

17.2 The parties acknowledge that they must respectively comply with applicable Japanese and United States laws, regulations or orders with regard to export and trade control, including those that may relate to the export of goods, software or technical information (regardless of whether tangible or intangible). This includes the *Foreign Exchange and Foreign Trade Act/Regulations of Japan* and the *Export Administration Act/Regulations* and/or *International Traffic in Arms Regulations* of the United States, as amended from time to time.

17.3 The parties agree to comply with all such laws, regulations and orders. Neither party will export, directly or indirectly, any goods, software or technical information (regardless of whether tangible or intangible) without first obtaining any required export licence or governmental approval.

17.4 If any goods, software or technical information (regardless of whether tangible or intangible) is export-controlled, each party shall provide the other with written notice containing the

nature of the export-controlled goods, software or technical information (regardless of whether tangible or intangible), prior to any shipment or exchange of export-controlled goods, software or technical information (regardless of whether tangible or intangible).

17.5 In addition, each party agrees that it will not use, transfer or convey (including by electronic transfer such as e-mail) to any person any goods, software or technical information (regardless of whether tangible or intangible) obtained from the other party for the purposes of developing, manufacturing or stockpiling conventional weapons, nuclear weapons, chemical weapons, biological weapons or weapons delivery vehicles.

18. GENERAL

18.1 **Indemnity:** You agree to indemnify and keep us indemnified in respect of all damages, losses, costs and expenses (including legal costs) that we may incur as a result of your breach or alleged breach of these Terms.

18.2 **Lawful purpose:** You must ensure the Goods and Services are used only for lawful purposes and in accordance with applicable laws.

18.3 **Binding:** These Terms bind our successors, administrators and permitted assigns and your executors and permitted assigns or your successors, administrators and permitted assigns (as applicable).

18.4 **Assignment:** We may without notice to you assign, transfer and/or sub-contract our rights and/or obligations (in whole or in part) under these Terms. You may not assign, transfer, hold on trust or otherwise delegate any of your rights or obligations under these Terms without our prior written consent.

18.5 **Time of the essence:** Time is of the essence for any date or period under these Terms.

18.6 **New Terms:** If we adopt new terms and conditions for the sale of Goods and Services:

18.6.1 you will be given written notice; and

18.6.2 they will apply to the subsequent supply of Goods and Services.

18.7 **Variation:** We may vary these Terms by providing you 14 days' written notice.

18.8 **Force Majeure:** If a Force Majeure Event occurs, we may:

18.8.1 totally or partially suspend any Order or any deliveries relating to an Order during any period in which we may be hindered due to that Force Majeure Event; and

18.8.2 elect to extend at our discretion the period for performance of an obligation under these Terms as is reasonable in all the circumstances.

18.9 **Severability:** Each clause in these Terms is severable and if any clause is held to be illegal or unenforceable, then the remaining clauses will remain in full force and effect.

18.10 **Waiver:** No failure, delay, relation or indulgence on our part in exercising any power, right or remedy precludes any other or further exercise of that or any other power, right or remedy.

18.11 **Governing law:** These Terms shall be governed by the laws of the State of New South Wales and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of the State of New South Wales.

19. INTERPRETATION + DEFINITIONS

19.1 **Personal pronouns:** Except where the context otherwise provides or requires:

19.1.1 the terms **we, us** or **our** refers to **Sysmex Australia Pty Ltd** (ABN 41 602 049 454); and

19.1.2 the terms **you** or **your** refers to any person or entity that places an Order with us and agrees (by conduct, notice or otherwise) to be bound by these Terms, including any related company, related party, officer and authorised person of the relevant person.

19.2 **Defined terms:** In these Terms, unless otherwise provided, the following terms shall have their meaning as specified:

ACL means the Australian Consumer Law under the *Consumer and Competition Act 2010* (Cth) as amended.

Charges means any sales tax, excise duties, customs duty, transfer duty, GST or any other taxes, duties or charges applicable in respect of the provision of the Goods and Services.

Default Event means any one of the following events:

- (a) you fail to make any payment when due, whether for the Goods and Services or otherwise;
- (b) if you are a person – you become an *insolvent under administration*;
- (c) if you are a body corporate – you become an *externally administered body corporate*;
- (d) proceedings or applications are commenced or made for the appointment of any persons listed in items (b) or (c) above;
- (e) a mortgagee or their agent enters into possession of your assets;
- (f) you cease or threaten to cease carrying on business; or
- (g) you experience a change in control or a material change in financial position which in our reasonable opinion adversely affects your ability to meet your obligations under this Agreement.

Default Interest means as defined in clause 5.

Delivery means the delivery of the Goods and Services in accordance with clause 6.1.

Force Majeure Event means circumstances beyond our reasonable control, which shall include, but not be limited to compliance with any laws, regulations, orders, acts, instructions or priority request of any government, or any department or agency, civil or military authority, acts of God, acts of the public enemy, your acts or omissions, fires, floods, strikes, lockouts, embargoes, wars, labour or material shortages, riots, insurrections, defaults of our suppliers or subcontractors, delays in transportation, loss or damage to Goods in transit or instructions or lack of instructions from you.

Goods mean goods we sell from time to time, including those set out in our Quote.

GST and GST Law mean as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means all forms of intellectual property rights (whether registered or unregistered) in copyright, designs, patents, trade marks, domain names, trade secrets, know-how, confidential information, and all other similar proprietary rights which currently exist and/or are recognised in the future.

Invoice unless otherwise agreed means the invoice issued upon the delivery of the Goods and Services specified in your Order.

Order means an order for Goods and Services received by us in accordance with these Terms.

Payment means payment of any amount relating to Goods or Services in accordance with these Terms.

PPSA means the *Personal Property Securities Act 2009* (Cth) as amended, including any regulations made pursuant to it.

PPSR means the Personal Property Securities Register.

Quote means a quotation by us for the supply of particular Goods and Services containing details as specified in clause 2.2.

Security Agreement means the security agreement set out in clause 12.

Services mean services we provide from time to time, including those set out in our Quote and as governed by our Installation + Maintenance Conditions.

Installation + Maintenance Services Conditions

1. OUTLINE

- 1.1 **Application:** The Terms and these installation + maintenance services conditions (**Conditions**) constitute this **Agreement**.
- 1.2 These Conditions apply if we have agreed to provide you with maintenance services as part of the Services as detailed in the Order we have accepted.
- 1.3 The provisions of these Conditions prevail to the extent of any inconsistency with the Terms.
- 1.4 Capitalised words not defined in these Conditions have the meaning given to them in the Terms.

2. THE SERVICES

- 2.1 We will, in consideration for the Price, provide the Services during the Maintenance Term in accordance with this Agreement.
- 2.2 The Services will include the following services to be provided in relation to our Goods as may be set out in our Quote:
- 2.2.1 installation and commissioning;
- 2.2.2 preventative maintenance and inspection; and
- 2.2.3 decommissioning, removal and/or replacement.

3. PREVENTATIVE MAINTENANCE

- 3.1 To arrange a maintenance call-out you must call our Telephone Support Line during Business Hours.
- 3.2 Our Personnel will attend your site to work on identified Goods during Business Hours.
- 3.3 If you wish to cancel a maintenance call-out less than 48 hours prior to scheduled dispatch of our Technician and not reschedule our Technician to attend your premises to conduct the Services within 48 hours from the cancellation, we reserve the right to invoice you a cancellation fee of 30%, which is a reasonable pre-estimate of loss we expect to incur as a result of your cancellation of the maintenance call-out.

4. EXCLUSIONS

- 4.1 For the avoidance of doubt the Price does not include the provision of the goods and/or services listed in this clause 4.
- 4.2 We may charge you and you agree to pay all costs and expenses we incur in providing the following services in addition to the Price:
- 4.2.1 significant overhauls and/or repairs to the your plant or equipment;
- 4.2.2 repairs, maintenance or replacement that results from or was contributed to by:
- A systems or equipment that we, acting reasonably, deem to be obsolete and can no longer be maintained without complete replacement due to non-availability of parts or components;
- B a recommendation or requirement of an insurance company, government or other statutory authority;
- C your failure to report a known malfunction, and/or caused by intentional non-replacement or

- late replacement of worn or defective part(s) by you;
- D the negligence or misuse of plant, equipment or systems by you or a third party;
- E failure to use the equipment or plant in accordance with relevant instructions or industry standards;
- F external communications malfunctions, faulty equipment interfaces, fluctuations or failure of electrical power outside of operating specifications;
- G use of improper consumable materials; and/or
- H any other cause beyond our reasonable control;
- 4.2.3 if we attend your site at an agreed time to undertake the Services or other work as requested and are denied or unable to access your site;
- 4.2.4 any additional fees agreed between the parties from time to time for additional services that we are to provide to you that are not included in the Services; and/or
- 4.2.5 the Rates.
- 4.3 You also acknowledge and agree the following costs and expenses are not included in the Price for the Services:
- 4.3.1 all costs associated or connected with consumables and shipping; and
- 4.3.2 cost of parts, shipping and labour. In such circumstances we will provide you a quote for acceptance and we will replace such relevant parts once agreed to by you.
- 4.4 We may conduct, or require you to provide to us, an assessment of the Goods to determine the condition of the Goods and whether any additional charges will apply in accordance with this clause 4.

5. PERSONNEL

- 5.1 You must permit us and our Personnel to enter your premises to provide the Services and to inspect the Goods.
- 5.2 We will ensure our Personnel involved in providing the Services to you are suitably qualified and skilled to perform the Services.
- 5.3 You are responsible for providing a work environment that is safe and that complies with all applicable legal requirements and must take all steps necessary to ensure the health and safety of our Personnel at your premises. These include, but are not limited to:
- 5.3.1 instructing our Personnel regarding your safety practices, which must be provided to us upon request;
- 5.3.2 ensuring our Personnel are protected from exposure to hazardous materials;
- 5.3.3 providing safe means of access to Goods to be serviced or maintained and complying with relevant legal and regulatory requirements; and
- 5.3.4 conducting periodic safety meetings.
- 5.4 If we reasonably believe the provision of the Services at your premises is or could be unsafe,

we may, in addition to other rights or remedies available to us:

- 5.4.1 recall our Personnel from your premises; and/or
- 5.4.2 suspend performance of any of the Services.
- 5.5 You must not during the Term require our Personnel to work on other projects or equipment other than the Goods.

6. CUSTOMER RESPONSIBILITIES

- 6.1 During the Term, you must:
- 6.1.1 if our Personnel are injured in any way while performing the Services on your premises, allow us to undertake an incident investigation and provide us with all necessary assistance;
- 6.1.2 provide us with access to all information within your possession or control required by us to provide the Services;
- 6.1.3 make available to us, on reasonable notice, your Personnel familiar with your organisation, operations and business practices for us to provide the Services;
- 6.1.4 co-operate with us to the extent necessary for us to provide the Services;
- 6.1.5 advise us in writing if any modifications, changes or additions are made or planned for the Goods covered by this Agreement; and
- 6.1.6 provide to us, upon request, concise fault reporting information for the faulty Goods, including:
- A Goods serial and model number;
- B site address or location;
- C contact details of a contact person at site address, including name, telephone number and email address;
- D Goods location at site address and instructions for accessing the Goods;
- E nature of the fault and symptoms;
- F time of failure;
- G fault priority; and
- H any access restrictions to the faulty Goods.

7. WARRANTIES + INDEMNITIES

- 7.1 You warrant and represent to us that you have:
- 7.1.1 full power and authority to enter into and do all things required by this Agreement; and
- 7.1.2 obtained all consents, permissions and licences necessary to perform your obligations under this Agreement.
- 7.2 You indemnify and must keep us indemnified against all and any liability (including for injury or death to our Personnel) arising in connection with any of the following:
- 7.2.1 any breach of this Agreement by your or your Personnel;
- 7.2.2 injury or death of any person;
- 7.2.3 damage to property resulting from operation of your equipment; and

- 7.2.4 your actions, omissions, negligence or misconduct in connection with this Agreement.

8. EXCEPTIONS

- 8.1 No warranty is given and we will not be liable for any loss, damage or delay caused by or arising out of:
- 8.1.1 factors beyond our control;
 - 8.1.2 any malfunction or failure of the Goods;
 - 8.1.3 any delays whatsoever in our attendance to your premises; or
 - 8.1.4 any accidents, injury, breakage or damage to your equipment, machinery, appliances or property or of any third party.

9. INTERPRETATION + DEFINITIONS

9.1 **Definitions in Terms:** Capitalised words not defined in these Conditions but defined in the Terms have the meaning set out in the Terms.

9.2 **Defined terms:** In these Conditions, unless otherwise provided, the following terms shall have their meaning as specified:

Business Hours means 9am to 5pm during a day that is not a Saturday, Sunday or a public holiday in Sydney, NSW.

Commencement Date means the date of commencement of our provision of the Services as specified in this Agreement or otherwise indicated by us in writing.

End Date means the end date for our provision of the Services as specified in this Agreement or otherwise indicated by us in writing.

Maintenance Term means the period we agree to provide you the Services from the Commencement Date until the End Date, or as may be otherwise agreed by the parties.

Personnel means, in relation to a person, that person's officers, employees, agents, nominees, authorised representatives, carriers, delegates, sub-contractors and in our case, our Technicians.

Price means the amounts payable for the Services, including the Rates.

Rates means our standard service call-out rates that we maintain from time to time.

Services means the maintenance call-out services to be provided pursuant to this Agreement.

Technicians means our employees or sub-contractors who are suitably qualified and skilled to perform the Services.

Telephone Support Line means the telephone line available during Business Hours by calling the number we advise you for this purpose.

Terms means our terms and conditions of sale.