

## AUSTRALIAN ALL STAR CHEERLEADING FEDERATION

### Terms and Conditions of Sale

**1. General** - These terms and conditions of sale (Terms of Sale) apply to every sale or licencing of products, designs, items and equipment, including labour, (Goods) made by Australian All Star Cheerleading Federation (AASCF & Associate Companies).

A person or business entity who orders Goods from the Company is referred to in these Terms of Sale as the "Purchaser". Each order from the Purchaser constitutes an offer by the Purchaser to acquire Goods from the Company on these Terms of Sale to the exclusion of all other terms and conditions.

**2. Variation** - No variation or cancellation of any of these Terms of Sale shall be binding on the Company unless agreed to by the Company in writing by a duly authorised representative of the Company.

**3. Entire Agreement** - The Company and the Purchaser agree that the Terms of Sale and the Purchaser's order constitute the entire agreement between the parties in relation to the Sale of Goods and that there are no other understandings, representations or warranties of any kind (express or implied) forming part of the agreement between the parties.

**4. Governing Law** - The applicable law of this agreement is the law of Victoria and the Company and Purchaser irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of Victoria.

**5. Precedence** - These Terms of Sale apply to the Purchaser and to the Company in respect of Goods ordered by the Purchaser and any terms and conditions set out in the Purchaser's order deviating from or inconsistent with these Terms of Sale have no legal effect, do not constitute part of the agreement between the parties and will not bind the Company notwithstanding any statement made by the Purchaser in its order that its terms and conditions will prevail over the Terms of Sale.

**6. Acceptance** - A quotation is not to be construed as an offer or obligation to sell and the Company reserves the right to accept or reject any orders received.

**7. Validity** - Quotations are valid for a period of 30 days from the date of quotation by the Company for supply within 60 days from date of acceptance or as otherwise specified in the quotation. Thereafter quotations and contractual delivery dates are subject to confirmation before acceptance.

The prices quoted by the Company are only for the supply of those Goods specified in the quotation and do not apply to any lesser quantities or additional Goods supplied by the Company unless specified in writing by the Company prior to supply.

**8. Termination** - This agreement may be terminated by the Company, without notice, if the Purchaser:

- (a) fails to perform or observe any obligation or agreement, express or implied in or given in relation to these Terms of Sale including, without limitation, the payment of money or refusal to take delivery of Goods;
- (b) being a natural person, is the subject of any personal insolvency event including without limitation, where an application is made to a court for an order that the Purchaser be declared bankrupt; or
- (c) being a company, has a receiver, receiver and manager, trustee, administrator, liquidator or other similar official appointed, or steps are taken for such appointment, whether voluntarily or otherwise, over any of the Purchaser's assets or undertakings, or if the Purchaser is unable to pay its debts if and when they fall due.

If termination occurs, then the Company may, without prejudice to any other rights it may have, do any or all of the following

things:

- (a) require immediate payment of all moneys owed to the Company by the Purchaser and withdraw any credit facilities which may have been extended to the Purchaser;
- (b) withhold any deliveries of Goods in respect of any purchase order accepted by the Company; and
- (c) in respect of Goods which may have already been delivered to the Purchaser but not paid for, enter the Purchaser's premises or elsewhere in accordance with clause 22( d) and ( e) to recover those Goods and resell those Goods for the Company's own benefit.

**9. Variation and Cancellation** - Purchaser-requested order changes, including those affecting the identity, scope and delivery of the Goods, must be documented in writing, are subject to the Company's prior written agreement and may be subject to adjustments in price, scheduling and other affected terms and conditions. The Company reserves the right to reject any Purchaser-requested change, especially where the change is deemed unsafe, technically inadvisable or inconsistent with established engineering or quality guidelines and standards, or incompatible with the Company's, its Supply Line Partner's or Supplier's design or manufacturing capabilities. The Company further reserves the right to substitute using the latest superseding revision or series or equivalent Goods having comparable form, fit and function.

If the Purchaser cancels an order by written notice prior to shipment for stock line items and the cancellation is accepted by the Company, the Company may charge the Purchaser reasonable cancellation and restocking fees, including reimbursement for the Company's direct costs incurred in connection with the cancellation.

Despite anything to the contrary in these Terms of Sale, the Company may charge cancellation fees associated with Goods ordered on a manufactured/ assembled to order or indent only basis up to the actual selling price of the Goods.

The Company has the right to cancel an order for cause at any time by written notice to the Purchaser and the Company will be entitled to cancellation and restocking charges as identified in this clause 9. No cancellation by the Purchaser for cause will be effective unless and until the Company has failed to correct such alleged cause within forty-five (45) days after receipt of the Purchaser's written notice specifying such cause.

**10. Information, drawings and documentation** - All descriptive specifications, illustrations, drawings, data, dimensions and weights furnished by the Company or otherwise contained in Company publications including price lists, brochures, catalogues, electronic media and other advertising material of the Company are approximate only and are intended to be by way of general description of the Goods and shall not form part of the agreement between the Company and the Purchaser unless otherwise specified by the Company in writing, in which case, they shall be subject to recognised tolerances and rejection limits. The Company does not agree to comply with any specifications and drawings referred to in any order unless such specifications and drawings have been produced to the Company prior to the delivery of Goods and have been agreed to in writing and signed by a duly authorised representative of the Company.

Following agreement to purchase, if the Purchaser requests the Company to provide certified drawings, the Company may, at its discretion, provide such certified drawings at the Purchaser's reasonable expense.

Any drawings, studies or other documents submitted by the Company to the Purchaser remain the property of the Company and constitute the confidential information, intellectual property and copyright of the Company. The Purchaser must not use them for any purpose other than in accordance with these Terms of Sale

and must not transmit, disclose or make them available to any third parties without the prior written consent of the Company.

**11. Performance** - Any performance figures given by the Company are based on the Company's experience and are figures that the Company expects to obtain on testing. Despite any representation by a representative of the Company to the contrary, the Company is under no liability whatsoever for damages for failure to attain such performance figures.

Following submission of a quotation or tender, the Company is not required to comply with any additional standards, specifications, rules or other requirements subsequently proposed by the Purchaser. If such additional standards, specifications, rules or other requirements are proposed by the Purchaser, the Company reserves its rights to decline to proceed with any resultant order or vary the supply including the price.

**12. Prices**

- (a) Subject to clause 7, all prices are subject to change without notice and all orders are accepted by the Company on the condition that they will be invoiced at the prices applying at the date of despatch of the Goods from the Company's premises.
- (b) Goods are sold on an ex warehouse/ex works basis and unless specified otherwise, prices do not include any transport costs. Where the Purchaser requires freight to be prepaid, all expenses will be to the Purchaser's account at cost.
- (c) All prices shown in any Company publications including price lists, brochures, catalogues, electronic media and other advertising material are recommended selling prices only and there is no obligation on the part of any reseller to maintain the same prices.
- (d) Goods which are quoted ex stock are subject to prior sale and any delivery time quoted is made without commitment.
- (e) All price lists and quotations are issued on an errors and omissions accepted basis. The Company may correct any clerical errors or omissions, whether in computation or otherwise in any quotation, acknowledgment or invoice.
- (f) Time and material services will be provided in accordance with the Company's published service rates (including applicable overtime and travel expenses) in effect as of the date such services are provided, unless otherwise confirmed by the Company's written quotation or order acknowledgment. Billable service time includes travel time to and from the job site and all time the Company's representatives are available for work and waiting (whether on or off the job site) to perform the services.

**13. GST** - For the purpose of these conditions "GST" means GST within the meaning of A New Tax System (Goods and Services Tax) Act 1999 (the Act).

All prices quoted or contained in any publication of the Company (including these Terms of Sale) are exclusive of GST unless specifically stated otherwise.

GST will be added to the price of the Goods and any other form of taxable supply at the rate applicable at the time of supply, and the Company will provide a valid tax invoice.

**14. Minimum order values** - The following minimum values will apply to orders supplied by the Company:

(a) \$5.00 including GST for Goods at our competition sales counter or at AASCF head office.

(b) \$100.00 including GST, delivery and freight charges, for Goods delivered to a Purchaser's premises or delivered as directed by the Purchaser.

**15. Delivery charge** - A delivery charge per order, charged at the rate applicable at the time of delivery, will be applied on all orders which are delivered to a Purchaser's premises, or as directed by the Purchaser. This amount will be shown as a separate item on all invoices.

The delivery charge will not be applied to the supply of equipment back orders from an original order, which is beyond the control of the Purchaser.

**16. Packing** - Unless stated otherwise in the quotation, the price quoted includes packing in accordance with the Company's standard practice. Any other specific packing and marking requirements not otherwise included in the price of the Goods and requested by the Purchaser and/or deemed necessary by the Company will be charged for in addition to the price quoted.

**17. Terms of payment** - For established trading accounts with credit facilities, the account must be paid within 30 days of receipt unless otherwise stated.

When payments are made contingent upon delivery, erection or test, and any of these stages are delayed to suit the Purchaser's wishes or convenience, or by reason of unreadiness of the Purchaser, payments are to be made within the time in which they ordinarily would have been made had there been no such delays, the Goods being, if necessary, stored at the Purchaser's risk and expense.

Should the Purchaser delay in respect of any payment due to the Company, the Company will have the right, in addition to all other rights at law, to charge interest on the overdue amount at a rate of 3% per annum above the overdraft rate payable by the Company to its bankers at the time of and after the default and calculated from the due date of the account until the actual date of full and final payment. Payment will be credited first against interest accrued.

The Company may render partial invoices and require progressive payments. The Company reserves the right to render invoices electronically and to receive payment by way of electronic funds transfer. Payment by credit or debit card, when permitted, is subject to credit card validation and authorisation both at the time of agreement and immediately prior to shipment and the Company reserves the right to recover as a separate charge, any processing fees and other administration costs incurred in processing the credit or debit card transaction.

The Company reserves the right to suspend any further performance hereunder or otherwise in the event payment is not made when due. Where the Purchaser's account is in arrears, the Company may demand payment of the arrears as well as payment in advance for any undelivered Goods before proceeding with manufacturing or making any further delivery of Goods under these Terms of Sale. In such circumstances, the Company may also defer or cancel any outstanding balance of an order and may enter the Purchaser's premises or elsewhere as provided in clause 22.

The Purchaser must make all payments due under these Terms of Sale without any set-off, counterclaim, deduction or condition unless the Company otherwise agrees in writing.

All payments must be made in Australian dollars.

**18. Delivery** - The delivery period quoted commences from the date the Company receives sufficient information to proceed with supply or from the date the Company receives the Purchaser's written order, whichever is the later date. Quoted delivery dates are subject to confirmation when placing the order. All delivery times made by the Company are made in good faith but are estimates only and not commitments. The Company is not in any circumstances liable to the Purchaser for any loss of profits or other loss or damage caused to the Purchaser by any delay in the delivery or any non-delivery of the Goods, or any part of the Goods.

Non-stock items indented against the Purchaser's specific requirements will not be ordered until the Purchaser has provided the Company with a signed declaration acknowledging that the Goods will be specially indented, the Company may refuse any cancellation or variation request by the Purchaser and the Goods may not be returned after delivery. Any estimated delivery time quoted prior shall not commence until receipt of such declaration by the Company.

Claims for shortages in deliveries must be advised to the Company in writing within 7 days of receipt of the Goods.

Where the Purchaser requests a particular method of delivery and the Company agrees in writing, the Purchaser must pay for the cost of delivery by that method from the point of despatch of the Goods by the Company. If prior to delivery the Purchaser notifies the Company in writing that it does not accept the costs payable for its nominated method of delivery, the Company may select the method and service level of delivery at the Purchaser's cost.

**19. Testing** - Prior to delivery of the Goods, the Company may, at its own expense, carry out any tests on the Goods in accordance with the Company's standards and testing procedures. Any additional tests, procedures and associated documentation required by the Purchaser are at the Purchaser's expense.

#### **20. Storage**

(a) If delivery is delayed for any reason beyond the Company's reasonable control for a period of 14 days after the date on which the Purchaser is notified that the Goods or any completed items forming part of the Goods are ready for delivery, the risk in such Goods shall immediately pass to the Purchaser, and the Company is entitled to present invoices to the Purchaser for payment of the Goods in accordance with clause 17.

(b) If the Purchaser fails to take delivery of the Goods in accordance with these Terms of Sale, the Company may arrange suitable storage of such Goods at the Company's premises or elsewhere and all costs of and incidental to such storage must be paid by the Purchaser. The Purchaser must, on demand, pay to the Company all costs of storage, insurance, demurrage, handling and other charges incidental to such storage.

(c) If delivery is delayed for any reason beyond the reasonable control of both the Company and the Purchaser beyond the period of 14 days following notification to the Purchaser that the Goods, or a part only of the Goods are ready for delivery, the costs of storage, insurance, demurrage, handling and other charges incidental to such storage shall be shared equally between the parties and the risk in the Goods remains with the Company. The Company is entitled to present invoices to the Purchaser for payment in accordance with clause 17 for half the quoted value of the Goods ready for delivery, the balance being invoiced when delivery is effected.

**21. Damage or loss in transit** - Where carriage is the responsibility of the Company, the Company will repair or replace free of charge and at the Company's absolute discretion, all Goods lost or damaged in transit to the contractual point of delivery provided written notice of such loss or damage is given to the Company within 3 days of delivery or expected delivery, or within such times as will enable the Company to comply with the carrier's conditions of carriage applicable to loss or damage in transit.

Prior to acknowledging delivery to the carrier the Purchaser must ensure that the complete consignment as per the carrier's note has been received. If there is a shortage or visible damage to the outer packaging of the Goods, the Purchaser must endorse the carrier's note accordingly.

The Company is not responsible for any loss or damage to the Goods caused by or arising from transport or delivery of the Goods if the Company has not packed the Goods or the Purchaser has nominated the carrier.

Claims made for damage or loss in transit must be made against the carrier in the manner prescribed by the carrier.

**22. Property, Risk and Title** - Risk in the Goods (including responsibility for insurance) passes to the Purchaser upon delivery of the Goods to the Purchaser. Unless specified to the contrary, the Goods will be delivered to the Purchaser ex warehouse/ex works and risk will pass to the Purchaser at the time of loading the Goods onto the transport deck (regardless of who pays for the freight).

Notwithstanding that the Goods are in whole or in part at the risk of the Purchaser, the property in and legal title to the Goods remains with the Company until they and all other Goods previously supplied by the Company to the Purchaser, whether under this or any other order for Goods from the Purchaser, have been paid for in full by the Purchaser.

Until the Goods have been fully paid for:

(a) the Company is and remains the legal and equitable owner of the Goods;

(b) the Purchaser holds the Goods as a fiduciary agent and bailee for the Company;

(c) the Company may by its servants and agents enter the Purchaser's premises or elsewhere at any time without notice to inspect the Goods;

(d) the Purchaser must deliver up the Goods to the Company on demand, and in default of delivery up, the Company may by its servants and agents enter the Purchaser's premises or elsewhere at any time without notice to repossess the Goods and to use reasonable force to take possession of the Goods without liability for trespass, negligence, payment of any compensation to the Purchaser or other person or otherwise. Any exercise of this right is without prejudice to any other rights the Company has against the Purchaser, including the right at all times to make a claim against the Purchaser for the invoiced price of the Goods and interest under clause 17, when due and payable;

(e) the Purchaser grants full leave and an irrevocable licence to the Company and any person authorised by the Company to enter any premises where the Goods may be stored, from time to time, for the purposes of retaking possession of the Goods. The Purchaser agrees that:

1. it will be liable for all costs, losses, and damages incurred or suffered by the Company (including any consequential losses and damages) as a result of the Company retaking possession of the Goods or otherwise exercising its rights under this clause 22; and
2. it will indemnify the Company, and keep the Company indemnified, for all fees (including legal fees on a full indemnity basis), costs and expenses incurred or suffered as a result of any and all prosecutions, actions, demands, claims or proceedings brought by or against the Company in connection with retaking possession of the Goods or the exercise by the Company of its rights under this clause 22;

(f) to the extent (if any) that the property in and legal title to the Goods has passed to the Purchaser by operation of law, then the Company has a specific lien over the Goods until paid for in full; and

(g) if the Purchaser pays for Goods by cheque then payment only occurs when all cheques have been presented and cleared in full.

The whole of this clause 22 applies notwithstanding any arrangements under which the Company grants credit to the Purchaser.

**23. Personal Property Securities Act (“PPSA”) –** Defined terms in this clause have the same meaning as those given to them in the PPSA.

The Purchaser and the Company acknowledge that these Terms of Sale constitute a Security Agreement for the purposes of s 20 of the PPSA and gives rise to a Purchase Money Security Interest (“PMSI”) in favour of the Company over the Goods supplied to the Purchaser as Grantor pursuant to the Terms of Sale.

The Goods supplied or to be supplied under these Terms of Sale fall within the PPSA classification of “Other Goods” acquired by the Purchaser pursuant to these Terms of Sale.

The Purchaser will execute such documents and do such further acts as may be required by the Company to perfect the Security Interest granted to the Company under these Terms of Sale under the PPSA by registration and ensure that until all of the obligations of the Purchaser are discharged and fully satisfied, the Company’s Security Interest under the Terms of Sale remains perfected and has priority over all other security interest in the Collateral (except for the Security Interests that the Company has expressly agreed to sub-ordinate).

The Purchaser undertakes that it will not, without the prior written consent of the Company (which it may grant in its sole discretion) change or permit the change of any of its details that are required to be included in the Financing Statement.

The Purchaser may not grant any Security Interest in all or any of the Goods except with the prior written consent of the Company (which may be withheld in its sole discretion).

The Purchaser agrees that the Company may apply to register its Security Interest in the Goods at any time before or after delivery of the Goods. The Purchaser irrevocably waives its rights under s 157 of the PPSA to receive a notice of any Verification Statement in respect of the Company’s Security Interest under these Terms of Sale.

The parties contract out of each provision of the PPSA which, under s 115(1) of the PPSA, they are permitted to contract out of.

Each party waives its rights to receive each notice which, under s 157(3) of the PPSA, it is permitted to waive.

Each party waives its rights to receive anything from any other party under s 275 of the PPSA.

The Purchaser acknowledges that it has received value as at the date of first delivery of the Goods and has not agreed to postpone the time for attachment of the Security Interest granted to the Company under these Terms of Sale.

**24. Returns and Credits -** Returns of unused and re-saleable standard Goods which are not under warranty and which are listed in the published price lists, brochures and catalogues, electronic media and other advertising material of the Company may, at the Company’s sole discretion, be returned for credit, provided that the Goods are:

- (a) returned within 14 days of delivery, free to the Company’s warehouse;
- (b) accompanied by a delivery docket stating the Company’s original invoice number and a valid reason for the return; and
- (c) returned in an unused, undamaged and resalable condition, in their original packing.

No Goods will be accepted for return under any circumstances (other than for reasons of wrong delivery or because the Goods are faulty) unless the invoiced value of the Goods is greater than \$20.00 excluding GST.

Goods will not be accepted for return for any reason between 15 and 30 days after the date of delivery unless by prior arrangement between the Company and Purchaser, and with the payment of a

restocking fee of 20% of original invoice value, or \$5.00, inclusive of GST, whichever is the greater.

No Goods will be accepted for return for any reason whatsoever beyond 30 days from date of delivery.

Where Goods which have been supplied by the Company on a manufactured/ assembled to order or indent only basis, the Company will not, unless agreed otherwise in writing, accept them for return except where such Goods are faulty or have been wrongly delivered against AASCF drawings and/or AASCF specification sheets signed off by the Purchaser prior to manufacture.

Subject to clause 30, any faulty Goods will be repaired or replaced, at the Company’s absolute discretion.

The Company may from time to time, develop policies in connection with the return of Goods, which will be notified to the Purchaser and must be complied with before any returned Goods are accepted by the Company in exchange for credit, or such returned Goods are otherwise repaired or replaced.

Nothing in this clause purports to modify or exclude any conditions, warranties, guarantees and undertakings under the Australian Consumer Law and the Australian Consumer Law will operate and prevail to the extent of any inconsistency.

**25. Force Majeure -** The Company will not be liable for any loss, damage or delay arising out of its failure (or that of its suppliers and subcontractors) to perform obligations under the Terms of Sale due to causes beyond its reasonable control, including without limitation, acts of God, acts or omissions of the Purchaser or its agents, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine restrictions, war, riots, acts of terrorism, delays in transportation, or transportation embargoes (Force Majeure Events). In the event of such delay, the Company’s performance date(s) will be extended for such length of time as may be reasonably necessary to compensate for the Force Majeure Event.

If a Force Majeure Event continues for a period of 3 months or more, the Company may (without affecting the accrued rights and obligations of the parties as at the date of termination) terminate this agreement immediately by written notice to the Purchaser.

**26. Loans & hire -** Any Goods loaned or hired out by the Company and not returned to the Company within the specified loan or hire period shall be deemed to have been sold to the Purchaser, and the list price on the date for return of the loaned or hired Goods shall become due and payable by the Purchaser.

Any Goods loaned or hired out by the Company must be returned by the recipient in the original packing, and in original condition, fair and reasonable wear and tear excepted.

Any Goods loaned or hired out to the Purchaser by the Company which are returned damaged or defective, due to reasons not covered by the Company’s standard warranty provisions, will result in the Purchaser being charged for repair charges, or the cost of the Goods loaned or hired out, whichever is the lesser.

Return freight, if applicable, will be prepaid by the Purchaser.

**27. Copyright, licences, patents and intellectual property -** All intellectual property rights, including but not limited to copyright, patents, design rights, trademarks, software and licences in, or related to, Goods supplied by the Company remain the property of the Company and shall not be available in any form to third parties, nor re-used by the Purchaser, unless agreed to in writing by the Company.

Any software supplied by the Company may be used by the Purchaser only on the computer or equipment configuration specified.

Use of Goods which contain, or are to be used with, standard or custom software or firmware may be subject to the Purchaser's acceptance of additional terms and conditions in separate Company or third-party licence agreements (Third Party Licence Agreements). Where there is a conflict between any term of a Third Party Licence Agreement and these Terms of Sale, the Third Party Licence Agreement will prevail to the extent of the inconsistency. In the absence of a Third Party Licence Agreement, the Purchaser is granted a non-exclusive, non-transferable and royalty free licence to use the purchased software or firmware only in object code form and solely in conjunction with the Goods, with no rights to sublicense, disclose, disassemble, decompile, reverse engineer, or otherwise modify the software or firmware.

The Purchaser must not alter, remove, or in any way tamper with, or otherwise do anything adverse to, any intellectual property rights (including but not limited to trade marks), whether registered or unregistered, or numbers of the Company or its Suppliers attached to or placed on the Goods.

**28. Training** - Where training forms a part of the supply of Goods, such training will be charged at a rate per 8 hour day (or part thereof ) for a specified number of trainees, and cover provision of training equipment, training instructor and course handouts. Where training is carried out external to the Company's offices, the cost of transporting equipment and instructor's air fares, hire car for site transportation, meals, accommodation and miscellaneous out of pocket expenses will be charged at the cost to the Company plus fifteen percent. All travel time and stand-by/waiting time will be charged in accordance with the Company's labour rate applying at the time of supply.

**29. Design or Manual assistance** - Subject to these Terms of Sale, any design or manual assistance provided by the Company, will be charged at the Company's labour rate applying at the time assistance is provided, (including travel and stand-by/waiting time), plus expenses at the cost to the Company plus fifteen percent. Applicable expenses include, but are not limited to, those described under clause 28 for external training. Any required miscellaneous materials purchased by the Company will be charged at cost to the Company, plus 25 per cent. Any assistance provided in accordance with this clause 29 shall be at the Purchaser's sole risk.

### **30. Warranty**

a) The Competition and Consumer Act 2010 (CTH) and the Australian Consumer Law may guarantee certain conditions, warranties and undertakings in relation to the Goods. To the extent they apply, these guarantees cannot be modified nor excluded by contract, and these Terms of Sale does not purport to modify or exclude any conditions, warranties, guarantees and undertakings under the Australian Consumer Law.

Except as expressly set out in these Terms of Sale and the Australian Consumer Law, the Company makes no warranty, representation or other statement in respect of the Goods, their quality or their fitness for any purpose, except as stated expressly in these Terms of Sale, or as may otherwise be required by law.

(b) If the Purchaser purchases Goods as a Consumer as defined in the Australian Consumer Law, then the Australian Consumer Law contains certain guarantees in relation to the Goods that cannot be excluded. In these circumstances, the Purchaser may be entitled to an identical replacement (or one of similar value if reasonably available), a refund or compensation for drop in value to the Goods, at the Purchaser's option. In the case of a minor failure, the Purchaser may have the Goods repaired, replaced or obtain a refund at the Company's option.

(c) If and only if the Purchaser is not a Consumer as defined in the Australian Consumer Law, the Company warrants that the Goods, whether manufactured by the Company, its Supply Line Partners

or its Suppliers, as published in the Company's current catalogues and supplied by the Company, shall, for a period of twelve month's from the date of despatch of the Goods from the Company's premises, be free of faulty workmanship, materials or design.

(d) The warranties provided in paragraph c) of this clause shall be effective, and impose liability on the Company to give effect to such warranty, only if:

(i) The Company is provided with written notice of the circumstances giving rise to the claim arising within 30 days of the occurrence of such circumstances; and

(ii) The Company is permitted to inspect Goods before they are repaired or replaced; and

(iii) The Purchaser returns the Goods or components to the Company's premises, at the Purchaser's expense; and

(iv) The Company is satisfied, by its own examination of the Goods, that any alleged circumstances giving rise to the claim have not been caused by:

1. improper use, installation, operation, damage due to accident, neglect, lightning power surge, or from improper repair, alteration, modification or adjustment to the Goods; or
2. unusual deterioration or degradation due to physical, electrical, electromagnetic or noise environments.

(e) To the extent permitted by law, the Company's liability for any loss, injury or damage, shall be limited to making good, by replacement or repair, at the Company's option, and at the Purchaser's expense in relation to costs over and above the direct costs of replacing or repairing the Goods or the component parts of the Goods at the Company's premises, any defects which appear under proper use.

(f) If and only if the Purchaser is not a "Consumer" as defined in the Australian Consumer Law, the Company warrants that any repairs that the Company undertakes to the Goods, shall, for a period of twelve months from the date of completion of the repair, be free of faulty workmanship, materials or design for a further period of twelve months, but only in respect of the components that are the subject of the repair.

(g) Any repairs, alterations or other work carried out to the Goods by a person other than an authorised representative of the Company shall invalidate the warranty in paragraph (f) of this clause.

(h) If the Purchaser requests or insists that warranty service in paragraph (f) of this clause be carried out on site or at the Purchaser's premises then any costs over and above the direct costs of replacing or repairing the Goods or the component parts of the Goods at the Company's premises shall be at the Purchaser's expense.

(i) The Company makes no representation and provides no warranty in respect of any standard or custom software and firmware, supplied in connection with the Goods, (including that any such software shall be uninterrupted or free of errors, or that the functions contained therein shall meet or satisfy the Purchaser's intended use or requirements), except as stated expressly in these Terms of Sale, or as may otherwise be required by law.

**31. Goods returned for repair (not under Warranty)** - Where

Goods are not under an express warranty or subject to a Consumer Guarantee and are returned for repair, the Company may charge a fee for inspection and preparation of a repair quotation and this fee shall be payable in the event that the Purchaser does not proceed with the repair.

Any repairs that the Company undertakes under this clause 31 are guaranteed for a period of ninety days from date of completion and only in respect of any replacement components that were used in the repair.

Despite anything to the contrary in this clause 31, the Company is not under any obligation to repair any Goods which are not under warranty.

**32. Fitness for purpose** - The Purchaser agrees that it does not rely on the skill and judgment of the Company in relation to the suitability of any of the Goods for a particular purpose or application for which the Goods are required by the Purchaser and the Company is under no liability whatsoever if such Goods are not suitable and fit.

**33. Compliance with laws and instructions**

(a) The Purchaser is solely responsible for obtaining all necessary permits and licences to comply with all applicable legislation, regulations, by-laws or rules (if any) having the force of law in connection with the installation and operation of the Goods.

(b) The Purchaser must comply with all instructions provided by the Company, its Supply Line Partner's or Supplier's in relation to the fitting, installation and use of the Goods.

**34. Indemnity**

(a) The Purchaser indemnifies the Company for any and all direct, special, indirect and/or consequential loss or damage, however caused to the Company and/or to third parties, that results as a consequence of the Company supplying, or failing to supply at all or on time, the Goods, to the Purchaser, or to any third party, under or in association with this Agreement.

(b) The Company shall be liable to the Purchaser, or to any third party, for direct, special, indirect and/or consequential loss or damage, however caused, suffered by the Purchaser, or to any third party, only to the extent that such loss or damage is caused directly by the fault of the Company.

(c) Notwithstanding anything else in this Agreement, and to the extent permissible by law, the Company shall be liable to the Purchaser, whether under the law of contract, in tort, under statute or otherwise, for any injury, loss or damage, only to the extent and in the proportion to which such injury, loss or damage is caused by the fault of the Company.

**35. Disputes** - The parties will use their best endeavours and attempt in good faith to promptly resolve any dispute arising in connection with these Terms of Sale. Negotiations shall be conducted in English between representatives of the parties who have authority to settle the dispute. Negotiation must be conducted within 30 days of a party providing written notice to the other party of the matter and circumstances giving rise to the dispute (Notice of Dispute). If the dispute has not been resolved within 30 days of a party giving a Notice of Dispute, the parties will further attempt in good faith to settle the dispute by non-binding third-party mediation, with mediator fees and expenses apportioned equally to each side. If a mediator cannot be agreed upon within 10 days of a party giving a Notice of Dispute, either party may request the President of the Law Institute of Victoria to appoint a mediator. Mediation must take place within 90 days of the date of the Notice of Dispute. Any dispute not so resolved by negotiation or mediation may then be submitted to a court of competent jurisdiction in Victoria Australia in accordance with the Terms of Sale. These procedures are the exclusive procedures for the resolution of all such disputes between the parties under these Terms of Sale.

**36. Limitation of liability**

(a) Notwithstanding anything else in this Agreement, and to the extent permissible by law, the Company's aggregate liability arising out of the performance or non-performance of its services, whether under the law of contract, tort, statute or otherwise, shall be limited to the price paid to the Company by the original Purchaser for the item(s) giving rise to the claim.

(b) The Company shall not be liable for any business interruption, loss of profit, revenue, materials, anticipated savings, data, contract, goodwill or the like (whether direct or indirect), or for any other form of incidental or consequent damage of any kind.

(c) The Company shall not be liable for any loss or damage where an action against the Company for such loss or damage is commenced after a period of eighteen (18) months has elapsed after the circumstances on which the alleged cause of action have occurred. This clause shall apply regardless of any other contrary provision in these Terms of Sale and regardless of the form of action. Each provision of these Terms of Sale which provides for a limitation of liability, disclaimer of warranty or condition or exclusion of damages is separate and independent.

**37. Severability** - Any provision in these Terms of Sale which is invalid or unenforceable in any jurisdiction is to be read down for the purpose of that jurisdiction, if possible, so as to be valid and enforceable, and otherwise must be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

**38. Waiver** - Waiver of any right, power, authority, discretion or remedy arising on a breach of or default under an agreement in force between the Company and the Purchaser on these Terms of Sale must be in writing and signed by the party granting the waiver.

**39. Notices** - Any notice or other communication including, but not limited to, any request, demand, consent or approval, to or by a party under these Terms of Sale must be in legible writing and in English addressed to such address as the other party has specified to the sender of the notice.

**40. Assignment** - The Purchaser must not assign or otherwise purport to transfer its rights or obligations under these Terms of Sale to any other person without the prior written consent of the Company.

**41. Amendment** - The Company reserves the right to review and amend these Terms of Sale from time to time. Written notification forwarded to the Purchaser by ordinary mail will be sufficient notification to bind the Purchaser to any revised or amended terms of sale for all orders placed by the Purchaser and accepted by the Company after the date of such notification.