

TECHSPAN AUSTRALIA (PTY) LIMITED
("Techspan")

TERMS AND CONDITIONS OF SALE

1. PRICE AND PAYMENT

- 1.1 **Price:** The Price in respect of any Goods to be supplied under the Contract shall be as set out in Techspan's price list, current as at the Date of the Contract (unless otherwise agreed by Techspan and the Customer in the Quotation). That price list may be changed by Techspan at any time by giving the Customer at least 20 Business Days written notice (or such lesser period as the Customer may agree to) of any such change taking effect.
- 1.2 **Price Variations:** The Price shall be increased by the amount of any increase in the cost of any items affecting the cost of supply, production and/or delivery of the Goods, due to circumstances beyond the control of Techspan, between the Date of the Contract and the date of Delivery.
- 1.3 **Legislative Changes:** If there are any changes in any legislation, bylaws, codes or standards with which Techspan is obliged to comply after the Date of the Contract, any additional costs incurred by Techspan in complying with those changes shall be added to, and become part of, the Price.
- 1.4 **Director's Certificate:** In the event of any disagreement between the parties regarding any calculation of the Price a certificate given by a director of Techspan shall, in the absence of manifest error or fraud, be conclusive evidence of the Price.
- 1.5 **Invoices:** Techspan shall invoice the Customer for all Goods sold by Techspan to the Customer (together with any other amounts payable by the Customer) pursuant to the Contract, either:
- (a) At the time of Delivery of those Goods; or
 - (b) At the end of each month in respect of all Goods Delivered during that month,
- and, subject to clause 1.6, such invoices:
- (c) Shall be payable by the Customer in full, without set off or deduction, on or before the later of:
 - (i) The date which is 15 Business Days after the receipt by the Customer of such invoice; and
 - (ii) The 20th day of the month following the month in which the relevant Goods were delivered.
 - (d) May be sent by Techspan to the Customer by hand delivery, post, facsimile or e-mail
- 1.6 **Letters of Credit:** Where Techspan:
- (a) Is required to Deliver Goods outside Australia; or
 - (b) Expressly stipulates in the Quotation that is required,
- payment shall be made by letter of credit (unless otherwise agreed in writing between the parties) established through a bank approved by Techspan. All such letters of credit shall be irrevocable, confirmed, without recourse, available for Techspan's draft at sight, and otherwise in a form satisfactory to Techspan.
- 1.7 **Taxes and Duties:** Unless expressly included in any Quotation, GST and other taxes and duties relating to the supply of Goods to the Customer are not included in the Price and shall be payable by the Customer in addition to the Price at the rate(s) prevailing as at Delivery of the Goods.
- 1.8 **Payment to be in Cleared Funds:** Receipt by Techspan of a cheque, bill of exchange or other negotiable instrument shall not constitute payment to Techspan of any amount under the Contract until the amount represented by that cheque, bill of exchange or negotiable instrument has been received in full and in cleared funds by Techspan.
- 1.9 **Overdue Amounts:** If any amount falls overdue for payment by the Customer under the Contract, such late or non payment shall constitute a default under the Contract and the overdue amount shall bear default interest from the date on which payment of that amount falls overdue until the date on which payment of the overdue amount is made in full. Default interest shall be calculated daily at the Default Interest Rate and shall be compounded monthly. In addition, Techspan may:
- (a) Repossess any Goods which remain the property of Techspan pursuant to clause 4.1.
 - (b) Withhold the supply of any Goods which the Customer has ordered and sell any such Goods to any other customer of Techspan.
- 1.10 **Costs:** The Customer shall upon demand reimburse Techspan for all costs (including legal costs on a solicitor/client basis), expenses or other sums incurred by Techspan in exercising any right or remedy available to it consequent upon default by the Customer which sum shall also carry default interest if unpaid within one calendar month of demand having been made.

2. DELIVERY AND SHIPMENT

- 2.1 **Delivery:** Delivery shall be made:
- (a) At the place indicated in the Contract or, if no such place is indicated, at Techspan's premises;
 - (b) In such manner as is indicated in the Contract or, if no such manner is indicated, in the manner elected by Techspan at its sole discretion,
- and if the Customer fails or refuses, or indicates to Techspan that it will fail or refuse, to take Delivery, Delivery shall be deemed to have occurred when Techspan was willing and in a position to deliver the Goods.
- 2.2 **Storage Expenses:** Techspan may, by written notice to the Customer, require the Customer to immediately reimburse Techspan for any storage expenses which Techspan has incurred as a result of any failure or refusal, or any indication of a failure or refusal, by the Customer to take Delivery.
- 2.3 **Freight:** Freight in respect of all Deliveries shall be arranged by Techspan, at the Customer's expense in all respects. Techspan shall invoice the Customer for Techspan's reasonable costs associated with:
- (a) The return freight of any Goods (or replacement Goods) which the Customer sends back to Techspan.
 - (b) Forwarding or receiving Goods (or replacement Goods) to or from (as the case may be) any third party manufacturer or supplier of the relevant Goods (whether such third party is situated inside or outside Australia).
- 2.4 **Export Sales:** If the Contract is for the export sale of Goods on a FOB, CIF or CFR basis, Delivery shall, unless otherwise stated in the Contract, be complete when the Goods leave Techspan's custody for shipment to the Customer. Trans-shipment of the Goods shall be allowed.
- 2.5 **Delivery by Instalments:** Subject to clause 2.1(b), Techspan may, at its discretion, make Delivery by instalments. Failure by Techspan to Deliver, or defective Delivery by Techspan of, any instalment, shall not entitle the Customer to repudiate the Contract.
- 2.6 **Under or Over Supply:** Delivery of 10% more or less than the quantity of the Goods ordered by the Customer shall constitute performance of Techspan's obligation to Deliver the Goods under the Contract, and the quantity of Goods under or over supplied shall be deducted from or added to the Price, accordingly.
- 2.7 **No Liability for Late or Non Delivery:** Techspan shall not be liable for any costs, loss or damage (including any consequential loss) incurred or suffered by the Customer as a result of the late or non Delivery.
- 2.8 **Time Not of the Essence:** Any time for Delivery shall, unless otherwise expressly stated in writing by Techspan, be approximate only and shall not be of the essence of the Contract.
- 2.9 **Delay:** If the manufacture, supply or Delivery of the Goods is delayed as a result of any act, omission, default or request by

or on behalf of the Customer, Techspan may require payment by the Customer of such portion of the Price as represents the extent to which Techspan has performed its obligations under the Contract up to the date on which such payment is required, together with any expenses or additional costs incurred by Techspan as a result of such delay. If the delay continues beyond a reasonable time (as determined by Techspan in its absolute discretion) Techspan may terminate the Contract.

3. RISK AND INSURANCE

- 3.1 **Risk:** Risk of any loss, damage or deterioration of or to the Goods shall be borne by the Customer from the time the Goods are first placed by Techspan into the possession of a Carrier for the purpose of Delivery.
- 3.2 **Insurance:** Until property in the Goods passes to the Customer pursuant to clause 4.1, the Customer shall, at its own cost, keep the Goods insured on a replacement basis (in the names of Techspan and the Customer, if so required by Techspan) and shall produce to Techspan, upon receipt from Techspan of a written demand to do so, such evidence as Techspan may reasonably require to confirm the existence of such insurance. If the Customer defaults in the performance of its obligations under this clause, Techspan shall be entitled to insure the Goods and the cost of effecting such insurance shall be payable by the Customer to Techspan upon written demand for payment.
- 3.3 **Damage/Destruction Prior to Title Passing:** If any Goods are damaged or destroyed prior to property in those Goods passing to the Customer pursuant to clause 4.1, Techspan shall receive all insurance proceeds which are payable in respect of such Goods (whether or not the Price of those Goods has become payable under the Contract). The production by Techspan of the Contract shall be sufficient evidence of Techspan's right to receive payment of such insurance proceeds, without the need for further enquiry by any person dealing with Techspan. The insurance proceeds shall be applied by Techspan as follows:
- First, if the Price of the Goods which are damaged or destroyed is unpaid, in payment of that Price.
 - Secondly, in payment of the outstanding Price of any other goods supplied to the Customer by Techspan (whether under the Contract or otherwise).
 - Thirdly, in payment of any other sums payable to Techspan by the Customer (whether under the Contract or otherwise).
 - Fourthly, any balance shall be paid to the Customer.

4. PROPERTY

- 4.1 **Retention of Title:** Property in the Goods shall not pass (and the Customer, upon receipt of the Goods, shall be a bailee only in respect of them) until the time at which Techspan has received cleared funds in respect of all moneys owing by the Customer to Techspan under the Contract. Until that time:
- Separate Storage:** The Customer shall store and identify the Goods in such a way that the Goods are clearly identified as the property of Techspan. The Customer shall not be entitled to intermingle such Goods with any other objects, or otherwise deal with the Goods so that they may become a constituent part of any other object, without the prior written consent of Techspan.
 - Condition:** The Customer shall maintain the Goods so supplied in good order and condition and return the Goods to Techspan immediately, if required to do so by written notice from Techspan.
 - Recovery:** Techspan may enter the premises in which Techspan believes that the Goods are stored to take possession of the Goods at any time after payment is due. If all or any of the Goods are wholly or partially attached to, intermingled with or incorporated in any other goods Techspan may in its sole discretion disconnect, retrieve or sever the Goods in order to remove them without being liable for any loss or damage caused or any liability incurred thereby.
- 4.2 **Proceeds:** If the Customer re-sells the Goods or any of them before payment is made the Customer shall hold the sale proceeds in trust for Techspan and account to Techspan for all moneys owed by the Customer to Techspan. If the Customer re-sells the Goods or any of them so as to create a debt owed to the Customer, the Customer hereby assigns all legal and equitable title to that debt to Techspan and the Customer hereby irrevocably appoints Techspan as its attorney with all powers permitted by law for the purpose of effecting any such assignment and recovery of any such debt in the name of the Customer for the benefit of Techspan.
- 4.3 **Indemnity:** The Customer shall at all times indemnify Techspan in respect of any loss, damage, cost or expense which Techspan suffers or incurs as a result of any breach by the Customer of clause 4.1(a) or (b) and the exercise by Techspan of its rights pursuant to clause 4.1(c).

5. SAMPLES AND DIES

- 5.1 **Samples:** Any sample of the Goods, exhibited to or inspected by the Customer at any time, is solely for the convenience of the Customer and the Contract shall not constitute a contract for sale by sample. All samples of the type referred to in this clause 5.1 shall at all times remain the property of Techspan.
- 5.2 **Dies:** Unless otherwise agreed between the Customer and Techspan, any dies, tools or fixtures made or obtained by Techspan (whether or not paid for in full or in part by the Customer) and used to produce the Goods, shall at all times remain the property of Techspan and Techspan may use or dispose of such dies, tools or fixtures at Techspan's discretion.

6. DEFECTIVE GOODS

- 6.1 **Replacement:** Subject to clauses 6.2 and 6.3, Techspan shall repair or replace (at its absolute discretion) any Goods Delivered to the Customer in a defective state, where the defect results from an act or omission by Techspan, but shall have no other liability in respect of those defective Goods.
- 6.2 **Written Notice:** Techspan shall not be liable to repair or replace any defective Goods:
- Unless written notice of the defect is received by Techspan as soon as reasonably possible following discovery of such defect.
 - If the defect is the result of incorrect storage or handling by the Carrier or Customer or any other person not under the direct control of Techspan.
 - If any attempt to rectify the defect is made by any person not authorised by Techspan to do so.
- 6.3 **Default by Customer:** Techspan shall not be obliged to repair or replace any defective Goods while the Customer is in default in the performance of any of its obligations under the Contract.

7. LIABILITY

- 7.1 **No Warranties:** Save for any warranties and conditions conferred in writing by Techspan on the Customer in relation to particular Goods sold by Techspan to the Customer and any warranties offered by Techspan's suppliers, Techspan makes no representation and gives no assurance, condition or warranty of any kind to the Customer (including any assurance, condition or warranty implied by law to the extent that the assurance, condition or warranty can be excluded) in relation to the Goods and accepts no liability for any assurance, condition or warranty, representation, statement or term not expressly set out in the Contract. In particular, but without limiting the foregoing, Techspan provides no warranty regarding the availability of facilities for the repair of goods supplied or replacement or spare parts in respect of goods supplied. Techspan will use reasonable endeavours to ensure that such facilities and replacement or spare parts remain available but will be under no liability to the Customer where such facilities and replacement or spare parts are unavailable.
- 7.2 **Trade Practices Act 1974:** The Customer acknowledges that the Goods are non-consumer goods acquired for the purposes of business and to the extent permitted by law any assurance, condition or warranty implied by the Trade Practices Act 1974 are hereby excluded and the Customer shall not assert or attempt to assert any rights or claims against Techspan under the provisions of that Act.
- 7.3 **Exclusions of Liability:** Subject to clause 7.4, Techspan shall in no way be liable (whether in contract, tort or otherwise) to the Customer for any loss, damage, cost or expense except any direct loss or damage actually suffered by the Customer as a result of a breach by Techspan of any of its obligations under this Contract. For the avoidance of doubt, Techspan shall not be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind suffered by the Customer. Furthermore, Techspan shall not be liable for loss or damage of any kind due to circumstances beyond its reasonable control.
- 7.4 **Limitation of Liability:** The maximum liability of Techspan, pursuant to clause 7.3, whether in contract, tort or otherwise, in respect of all claims for loss, damage or injury, however arising, in respect of any Goods shall not in aggregate exceed the Price of those Goods.
- 7.5 **Acknowledgement:** The Customer acknowledges that it is the Customer's responsibility to:
- Determine the suitability or otherwise of any Goods for their intended purpose/use;
 - Ensure that all products are used correctly, in accordance with the manufacturer's instructions, and that proper care is taken in the use of those Goods and that the products are used in compliance with all relevant health and safety regulations and any relevant industry standards;
 - Ensure that any modular equipment or component parts for installation into another machine or installation are installed in a safe manner in accordance with all relevant safety requirements.
- Techspan accepts no responsibility for any loss, damage or injury caused as a result of the Customer's failure to comply with the above clauses.
- 7.6 **Advice:** The Customer acknowledges that any advice given by Techspan to the Customer, is based on Techspan's experience and the manufacturer's experience, is given in good faith and that all reasonable endeavours have been taken by Techspan to ensure the accuracy of that information. Techspan accepts no liability for any inaccuracies contained in that information or advice.
- 8. TERMINATION**
- 8.1 **For Cause:** Techspan may terminate the Contract at any time and with immediate effect by written notice given by Techspan to the Customer if:
- The Customer has failed to comply with an earlier written notice given by Techspan specifying a material breach of this Contract by the Customer and, in the case of a breach which is capable of remedy, requiring that the Customer remedy that breach within 5 Business Days after receipt of that earlier notice, provided that Techspan may not at any time give such a notice terminating this Contract if, at that time, Techspan is in default under this Contract.
 - The Customer goes into liquidation (otherwise than for a solvent restructuring which has been previously approved in writing by Techspan (which approval may not be unreasonably withheld)) or a receiver or statutory manager has been appointed in respect of the Customer or any material part of its assets or if any event analogous in nature has occurred in respect of the Customer under the laws of any relevant jurisdiction.
 - The Customer suspends, for 10 Business Days or longer, or ceases, its principal business activities.
 - The Customer makes any assignment to, or enters into an arrangement for the benefit of, its creditors (other than for the purposes of a solvent restructuring).
 - There occurs any change in the composition of the shareholding in, or the board of directors of the Customer or the Customer ceases to be controlled by the same persons as at the date of this Contract.
 - The Customer has committed any material breach of this Contract, which breach is not reasonably capable of being remedied by the Customer within 5 Business Days, provided that Techspan may not at any time give such a notice terminating this Contract if, at that time, Techspan is in default under this Contract.
 - The Customer (if the Customer is an individual):
 - Dies; or
 - Is adjudicated bankrupt; or
 - Becomes, or if any of the Customer's property becomes, the subject of an order made pursuant to any legislation relating to the protection of personal and property rights.
 - The Customer (if the Customer is a partnership) is dissolved.
- 8.2 **Techspan's Rights on Termination:** If any of the events referred to in clause 8.1 shall occur, Techspan may then:
- Enter upon the premises where any Goods for which Techspan has not been paid are situated and take possession of and remove those Goods, without being responsible for any damage caused in doing so; and
 - Resell those Goods and apply the proceeds towards the payment of all moneys owing to Techspan by the Customer,
- and all costs incurred by Techspan as a result of such action shall be immediately payable by the Customer upon written demand from Techspan.
- 8.3 **Consequences of Termination:** Upon termination of this Contract for whatever reason:
- Such termination shall be without prejudice to the rights and remedies of either party in respect of any antecedent breach of this Contract by the other party.
 - The provisions of clauses- 1.1, 1.9, 1.10, 3.2, 4.1, 4.2, 4.3, 5.1, 5.2, 7.1 to 7.6 (inclusive), 8.3 and 12.1 to 12.3 (inclusive) and those other provisions of this Contract which are incidental to, and required in order to give effect to those clauses, shall remain in full force and effect.
 - Notwithstanding any contrary provision in this Contract, any amount payable by the Customer to Techspan under this Contract shall be deemed to have fallen due and payable immediately prior to such termination occurring.

9. INTELLECTUAL PROPERTY

- 9.1 **Patents and Copyright:** If any Goods are to be supplied to the Customer's design, the Customer warrants that the manufacture or supply of the Goods by Techspan will not infringe any patent, copyright, registered design, trade mark or other right of any other person. The Customer indemnifies Techspan in respect of any cost, loss or expense incurred or suffered by Techspan as a result of any claim being made that the manufacture or supply of such Goods by Techspan infringes any such rights.

10. DIMENSIONS AND SPECIFICATIONS

- 10.1 **Estimates Only:** Dimensions and specifications contained or referred to in the Contract or in any catalogues or other publications issued by Techspan are approximate only. Unless otherwise expressly agreed in writing by the parties, it is not a condition of the Contract that the Goods will correspond precisely with such dimensions or specifications.
- 10.2 **Custom Manufactured Goods:** Where any Goods are produced, formulated, mixed or cut to conform with the Customer's dimensions or specifications those Goods shall be non returnable and payment for such Goods shall be non refundable.

11. NOTICES

- 11.1 **Manner of Delivery:** Any written notice required to be given pursuant to the Contract shall (without limitation) be deemed validly given if delivered by hand or sent by facsimile transmission (provided that the sender's facsimile machine confirms transmission to the intended recipient) to the intended recipient's physical address or facsimile number, as may be set out in the Contract (or to such other physical address or facsimile number as the intended recipient shall notify to the other party in writing from time to time).
- 11.2 **Time of Delivery:** For the purposes of the Contract, any notice transmitted by facsimile or delivered after 5.00pm on a Business Day, or at any time on a non Business Day, shall be deemed received at 9.00am on the next Business Day.

12. DISPUTE RESOLUTION

- 12.1 **Good Faith Discussion:** The parties shall meet and discuss in good faith any dispute between them arising out of the Contract.
- 12.2 **Mediation:** If the discussions referred to in clause 12.1 fail to resolve the relevant dispute, either party may (by written notice to the other party) require that the dispute be submitted for mediation by a single mediator nominated by the President for the time being of the **New South Wales/Victorian Law Society**. In the event of any such submission to mediation:
- (a) The mediator shall be deemed to be not acting as an expert or as an arbitrator.
 - (b) The mediator shall determine the procedure and timetable for the mediation.
 - (c) The mediation shall take place in **Sydney/Melbourne**, Australia.
 - (d) The cost of the mediation shall be shared equally between the parties.
- 12.3 **No Legal Proceedings:** Neither party may issue any legal proceedings (other than for urgent interlocutory relief) in respect of any such dispute, unless that party has first taken all reasonable steps to comply with clauses 12.1 and 12.2.

13. GENERAL

- 13.1 **Non Waiver:** No waiver by Techspan of any breach or failure to enforce any provision of the Contract shall in any way affect, limit or waive Techspan's right to subsequently enforce and compel strict compliance with the Contract.
- 13.2 **Non Assignment:** The Customer may not transfer or assign any of its liabilities or rights under the Contract to any other person without the prior written consent of Techspan, which consent may be withheld at Techspan's sole discretion.
- 13.3 **Partial Invalidity:** If any provision of the Contract is or becomes invalid or unenforceable, that provision shall be deemed deleted from the Contract and such invalidity or unenforceability shall not affect the other provisions of the Contract, all of which shall remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provisions.
- 13.4 **Governing Law and Jurisdiction:** The Contract is governed by the laws of Australia and the parties submit to the non-exclusive jurisdiction of the Australia courts in respect of all matters relating to the Contract.
- 13.5 **Privacy Act:** Where the Customer is an individual, the Customer irrevocably authorises Techspan:
- (a) (Subject to any confidentiality obligations) to obtain from any third party such information in respect of the Customer as Techspan may require in connection with its lawful commercial purposes, including (without limitation) determining whether to extend credit to the Customer and to verify any such information.
 - (b) To provide any such information to any third party in connection with those lawful commercial purposes.
- 13.6 **Acknowledgement:** The Customer acknowledges that it is aware of the rights of access to, and correction of, personal information under the Privacy Act 1988.
- 13.7 **Entire Arrangement:** This Contract records the entire arrangement between the parties relating to the matters dealt with in the Contract and supersedes all previous arrangements whether written, oral or both, relating to such matters.
- 13.8 **Disposal of Toxic Goods/By Products:** The Customer acknowledges that the safe disposal of toxic Goods or by products is the sole responsibility of the Customer and Techspan accepts no liability for loss, damage or injury arising from the failure of the Customer to safely dispose of such Goods or by products.
- 13.9 **Conflict Between Terms:** In the event that conflict arises between any Quotation (including any confirmation of Order made by Techspan) and these terms and conditions, the express provisions contained in the Quotation (including any confirmation of Order made by Techspan) shall prevail.
- 13.10 **Remedies Cumulative:** The rights, powers and remedies provided in the Contract are cumulative and not exclusive of any rights, powers or remedies provided by law.

14. DEFINITIONS & INTERPRETATION

- 14.1 **Definitions:** In the Contract, unless the context requires otherwise:
- "**Business Day**" means a day on which registered banks are open for business in **Sydney/Melbourne** including Saturdays, Sundays and public holidays.
 - "**Carrier**" means the carrier responsible for delivery of the Goods to the Customer.
 - "**Contract**" means the provisions of any Quotation and Techspan's confirmation of Order (if any) together with these terms and conditions.
 - "**Customer**" means the person buying the Goods from Techspan.

"Date of the Contract" means:

- (a) Where the Contract arises from an Order, the later of the date of acceptance of that Order by Techspan and the date when any of the Goods, which are the subject of such an Order, are despatched from Techspan's premises for Delivery.
- (b) Where the Contract arises from a Quotation, the date upon which unconditional written acceptance of that Quotation is received by Techspan or, where no written acceptance of the Quotation is received by Techspan, the date upon which Techspan reasonably determines that it has received from the Customer a valid acceptance of that Quotation.

"Default Interest Rate" means 2% above the commercial overdraft rate charged by Techspan's bankers during the period of default.

"Delivery" means delivery of the Goods to the Customer in accordance with the Contract or, as the case may require, the point in time at which such delivery is completed (and **"Deliver"** and **"Delivered"** shall have a corresponding meaning).

"Goods" means the goods (including, without limitation, all parts and components for and of such goods) being purchased by the Customer from Techspan, which are the subject of the Quotation or confirmation of the Order.

"GST" means goods and services tax in terms of the A New Tax System (Goods and Services Tax) Act 1999, at the rate prevailing from time to time.

"Order" means an order placed by the Customer for the purchase of the Goods.

"Price" means the price of the Goods.

"Quotation" means a written quotation given by Techspan to the Customer, on or prior to the Date of the Contract, for the sale of the Goods.

14.2 **Interpretation:** In the Contract:

- (a) All monetary amounts are stated and are payable exclusive of GST and in Australian dollars, unless provided otherwise.
- (b) Where the context permits, the singular includes the plural and vice versa.
- (c) References to the terms "FOB, CIF and CFR" shall refer to those terms as defined in the 2000 edition of Incoterms, published by the International Chamber of Commerce.
- (d) Where the Customer comprises 2 or more persons, an obligation to be performed by the Customer binds those persons jointly and severally.
- (e) References to any **"party"** mean a party to the Contract and include the successors, executors, administrators and permitted assignees (as the case may be) of that party.
- (f) All references to legislation are (unless stated otherwise) references to Australian legislation and include all subordinate legislation, any reenactment of, or amendment to, that legislation and all legislation passed in substitution for that legislation.
- (g) References to a month are references to a calendar month.