

GENERAL TERMS AND CONDITIONS FOR ONLINE ORDERS

AS AT 10/2021

1. INTERPRETATION

In these Terms:

- 1.1 **"Balluff website"** means <https://www.balluff.com/en-au/>.
- 1.2 **"Buyer"** means the person or entity with whom the Company has contracted under the Contract and his, her or its successors and assigns.
- 1.3 **"Company"** means Balluff Pty Limited ACN 165 666 811 of 18 Malvern Street, Bayswater VIC 3153 and its successors and assigns.
- 1.4 **"Confidential Information"** means all the Company's trade secrets, confidential business and technical information, know-how, buyer and supplier lists (whether in electronic or hard copy form), not generally known to the public but for a breach of these Terms.
- 1.5 **"Contract"** means the agreement between the Company and the Buyer constituted by these Terms and, if issued, will also comprise and include the Order Acceptance and if there is any inconsistency between them then the Order Acceptance will prevail over the Terms.
- 1.6 **"Day" or "days"** means calendar days unless stated otherwise.
- 1.7 **"Excluded Loss or Damage"** means any:
 - a) loss of profit, revenue (including anticipated revenue), use, product or production (including delayed, postponed, interrupted or deferred production and/or inability to produce, deliver or process), bargain, contract, expectation or opportunity, access to markets, goodwill and/or business reputation even if such loss is a direct loss or a loss that flows naturally from the relevant breach;
 - b) cost of removal or storage of defective goods or plant or materials;
 - c) indirect loss;
 - d) loss consequential on other loss;
 - e) remote or unforeseeable loss or damage;
 - f) liquidated sums including liquidated damages, penalties, losses or damages arising under any contracts or agreements other than the Contract;
 - g) kind of loss or damage considered other than loss arising in usual course of things; and
 - h) any similar loss or damage, whether or not in the reasonable contemplation of the Parties at the time of execution of the Contract, and in each case arising from or in connection with the performance of the applicable Contract, whether arising from a breach of contract or tort (including negligence) or under any statute or any other basis, in law or equity, and whether or not foreseeable by the Company or the Buyer at the time of entering into the Contract.
- 1.8 **"Force Majeure Event"** means any matter or thing beyond the Company's control including but not limited to transport and supply stoppages and breakdowns, fire, flood, earthquake, acts of God, strikes, lockouts, work stoppages, wars, riots or civil commotion, pandemics or epidemics, intervention of public authority, explosion or accident.
- 1.9 **"GST"** means the Goods and Services Tax imposed by A New Tax System (Goods & Services Tax) Act 1999 (Cth) in Australia and any related acts and/or regulations of either statute.
- 1.10 **"Industrial Property Rights"** means patents, designs, brands, including their respective registrations, as well as copyrights.
- 1.11 **"Order"** means the Buyer's order using the shopping cart system which is placed in accordance with clause 3.
- 1.12 **"Order Acceptance"** means the Company's written acknowledgment that:
 - a) "the Buyer has ordered the Products;
 - b) the Contract has been concluded; and
 - c) the purchase is subject to the Contract.d) **"Products"** means all products supplied by the Company from time to time including software programmes, spare parts and consumables.
- 1.13 **"PPSA"** means the Personal Property Securities Act 2009 (Cth).
- 1.14 **"PPSR"** means the personal property security register created under the PPSA.
- 1.15 **"Terms"** means these General Terms and Conditions for Online Orders, as amended from time to time.

2. APPLICATION

- 2.1 These Terms apply to all Products sold or supplied by the Company via the Balluff website: <https://www.balluff.com/en-au/>.
- 2.2 All provisions of the Contract are set out in these Terms and the Order Acceptance.
- 2.3 No amendment, alteration, waiver or cancellation of any of these Terms is binding on the Company unless confirmed by the Company in writing.
- 2.4 The Buyer acknowledges that no employee or agent of the Company has any right to make any representation, warranty or promise in relation of the Products or the sale of the Products other than as contained in these Terms.

3. CONCLUSION OF CONTRACT

- 3.1 The presentation of the Products on the Balluff website does not represent a legally binding offer of contract by the Company, but only a non-binding invitation to the Buyer to order Products.
- 3.2 The Buyer submits a binding offer when the Buyer goes through the order process entering the relevant details and click on the button „Order with an obligation to pay“ in the last step.

- 3.3 The Company will confirm receipt of the Buyer's order immediately with an automatically generated email (order receipt confirmation). This is not an Order Acceptance, which is sent by the Company in the next step, and which leads to the conclusion of the Contract.
- 3.4 The technical steps of concluding a Contract are as follows:
- a) On the Balluff website the Buyer must go to a display of individual Products using the product selector or by entering the search term directly.
 - b) The Buyer can place the individual Products in the shopping cart without obligation by clicking on the „Add to shopping cart“ button and can view the items in the shopping cart at any time without obligation by clicking on the „Shopping cart“ button.
 - c) Using the trash symbol, the Buyer can remove the selected Products again from the shopping cart.
 - d) If the Buyer wishes to purchase the Products in the shopping cart, click on the „Pay“ button, whereby a new page is opened. The Buyer can now complete the purchase either as a registered customer or guest (without registration).
 - e) For registration, the Buyer must enter the Buyer's email address and click on the button „Continue with customer registration“. Using the Buyer's email address, and if necessary other details entered by the Buyer, the Company will check if the Buyer is already an existing customer of the Company - the Buyer's authorization to use the shopping cart system. The Buyer creates the Buyer's own password, which is assigned to the Buyer's email address (the Buyer's login), in the course of registration; the Buyer does not need to register again for future orders; simply enter the Buyer's email address and password.
 - f) In the next intermediate step, the Buyer has the option to change the details for the billing address and delivery address. For this purpose, the Company will show the Buyer the addresses the Buyer has entered during the registration process (for new customers) or the addresses that are stored in the ERP system (for existing customers). The Buyer also has the opportunity again to review all details and make any necessary corrections using the delete and change function.
 - g) If the Buyer wishes to complete the purchase as a guest (without registration), the Buyer must click on the button „Without registration“ and enter the Buyer's company details and address once in the next step. The Buyer again has the option to correct the Buyer's details using the delete and change function.
 - h) In the final step, the Buyer can select and correct the method of payment and complete the order process by clicking on the button „Order with an obligation to pay“. The Company will save the contract text of the order. The Buyer can save and print the contract text and these terms and conditions, which are made available on a linked page.
 - i) The Buyer can view previous orders in the customer area under „My orders“.

4. DISCLOSURE REQUIREMENTS – PASSWORD

- 4.1 The Buyer is obliged to furnish true and complete information when using the shopping cart system. Whenever data, particularly name, address, and email address change, the Buyer must notify the Company immediately of these changes by changing the details in the shopping cart system. If the Buyer fail to provide this information, or provide false or incomplete data from the outset, the Company is entitled to terminate the Contract, provided a Contract has been concluded. The Buyer must ensure that the email address the Buyer specified is accessible from the time the Buyer provided it and that the receipt of emails is not impossible due to forwarding, shutdown, or overloading of the email account.
- 4.2 The password is required to submit the Order. The Buyer is required to store the password carefully and use it in such a way as to preclude its loss or disclosure to unauthorized third parties. If the password is lost, the Buyer is obliged to inform the Company immediately. This can also be done by email. The Company will block the password-protected area immediately following receipt of the notification. If a third party receives knowledge of the password as a result of the Buyer's negligent or improper use, then the Buyer will be liable for the orders made with this password for their full amount up until the loss is reported.

5. PERFORMANCE

- 5.1 Performance
Any performance figures provided by the Company are based on the Company's experience and are such as the Company could expect to obtain on testing. The Company shall be under no liability or damages should Goods and/or Services supplied by it fail to attain such performance figures unless the Company has specifically guaranteed in writing the attainment of such performance figures, subject always to recognised tolerances applicable to such performance figures.
- 5.2 Where the Company has guaranteed performance figures in respect of Goods and/or Services supplied by the Company and the performance figures attained in respect of such Goods on any test are outside applicable tolerances, the Company shall be given reasonable time to rectify the performance of such Goods and the Company's liability shall be subject to clause XI of these terms.

6. DELIVERY

- 6.1 Unless otherwise expressly agreed upon, Products are supplied ex-works (Incoterms in their applicable version, currently Incoterms 2020) at the place of manufacture and delivery to a carrier's vehicle, including loading, shall constitute delivery by the Company to the Buyer. The carrier's vehicle shall be of a type allowing vertical or horizontal access for loading as required by the Company.
- 6.2 Availability dates are estimates only, but the Company will use its best endeavours to maintain the respective estimate date of delivery.

- 6.3 The Company will only deliver the Products to locations within Australia and for use in Australia.
- 6.4 The estimated date for delivery may be extended by a suitable length as determined by the Company in its discretion:
- a) if the Buyer fails to supply information in good time required by the Company to execute the order, or if the Buyer changes specifications; or
 - b) in the case of a force majeure event (see clause 7); or
 - c) if necessary permits or documentation from third parties to be procured by the Buyer are not provided on time; or
 - d) if the Buyer has not fulfilled his contractual obligations, particularly the payment obligations, in full.
- 6.5 The Company may at any time extend the time for delivery of the Products provided that the extension does not exceed the reasonable amount of time allowable for such delivery.
- 6.6 The Buyer acknowledges and agrees that time is not of the essence in relation to delivery of the Products by the Company to the Buyer.
- 6.7 The Company reserves the right to deliver the Products in whole or by instalments, as well as to deliver prior to the date for delivery, and in such event, the Buyer must not refuse to take delivery of the Products.
- 6.8 Where the Products are delivered by instalments, each instalment is regarded as a separate Contract.
- 6.9 Any failure on the part of the Company to deliver any instalment within any specified time does not entitle the Buyer to repudiate the Contract in respect of the balance of the Products that have not been delivered.
- 6.10 If the delivery is delayed at the Buyer's request or owing to circumstances for which the Buyer is accountable, then the Company is to the extent permitted by law entitled to invoice the Buyer the costs arising from storage, insurance, demurrage, handling and other contingent charges after notification of the readiness for dispatch, at least 0.5% of the invoice amount for every week of the delay or part thereof, however, a total of 10% of the invoice amount. Both parties are entitled to prove that higher, lower, or no storage etc. costs are incurred. The legal rights to terminate the contract and demand damages shall remain unaffected thereby.
- 6.11 For the avoidance of doubt, delivery shall not be by way of airfreight unless agreed to in writing by the Company and set out expressly in the Company's quotation.

7. FORCE MAJEURE AND RISK

- 7.1 The Company will not be liable for any breach of contract due to a Force Majeure Event provided that if the Force Majeure Event continues for a period of three (3) months, either the Company or the Buyer may cancel the Order affected by the Force Majeure Event and, if at the time of cancellation of the Order, the Buyer has already paid for the Products then the Company will refund the payment less the costs of packaging, delivery, freight and insurance.
- 7.2 The Products are entirely at the risk of the Buyer from the moment the Products leave the Company's premises even though property in and title to the Products may not have passed to the Buyer at that time.
- 7.3 The extra costs and risks of customary shipping shall be borne by the Buyer. The Company does not bear risks of accidental loss or deterioration during the transportation outside EX-WORKS in transit.

8. PROPERTY IN PRODUCTS AND PERSONAL PROPERTY SECURITY

- 8.1 Neither legal nor beneficial ownership of the Products supplied by the Company will pass to the Buyer and the Buyer grants the Company a security interest in the Products until such time as the Products so supplied by the Company to the Buyer from time to time, have been paid in full in cash or cleared funds.
- 8.2 Until the amount payable to the Company in respect of the Products has been paid in full in cash or cleared funds:
- a) the Buyer will hold the Products only as bailee for the Company;
 - b) the Products must be stored in such manner that they are readily distinguishable from other goods owned by the Buyer or other persons and so as to clearly show that they are the property of the Company; and
 - c) the Buyer must indemnify the Company from and against any claim, action, proceeding, damage, loss, cost, expense or liability incurred or suffered by the Company arising out of the possession, use or disposal of the Products by the Buyer or repossession or attempted repossession of them by the Company.
- 8.3 The Buyer acknowledges that the Company has a security interest in the Products and/or their proceeds for the purposes of the PPSA and that the Company may register its security interest in the Products and their proceeds on the PPSR and the Buyer in Australia in accordance with section 157 (3) (b) of the PPSA, waives the right to receive notice of such registration. The Buyer also undertakes, at its own expense, to promptly do anything (such as supplying information) which the Company requests and reasonably requires the Buyer to do for the purposes of ensuring that the security interest is enforceable, perfected or otherwise effective.
- 8.4 If the Buyer acts in breach of contract, in particular if the Buyer fails to pay the purchase price due, the Company shall be entitled to withdraw from the contract in accordance with the statutory provisions and to demand the return of the goods on the basis of the retention of title. The demand for return also includes the declaration of withdrawal. If the Buyer does not pay the due purchase price, the Company may only assert these rights if the Company has previously set the Buyer a reasonable deadline for payment without success or if such setting of a deadline is dispensable under the statutory provisions.

9. RE-SALE OF PRODUCTS

- 9.1 Should the Buyer be a re-seller of the Products then, subject to clause 9.2, the Buyer has the right to sell the Products in its own name at full market value and in the ordinary course of business.
- 9.2 Until the amount payable to the Company in respect of the Products, and in respect of all other Products previously supplied by the Company to the Buyer, have been paid in full in cash or cleared funds, any sale of the Products under clause 9.1 will only be effected by the Buyer as trustee for the Company and the proceeds of such sale and the rights of the Buyer against the Buyer's own customer arising from such sale will be held on trust for the Company. The said proceeds must be held in a separate account or otherwise clearly identified in the books and records of the Buyer.
- 9.3 If the Buyer resells any Products, then, unless the Products are clearly identifiable by serial numbers or other distinguishing marks, the Buyer is deemed to have disposed of the Products in the chronological order of supply by the Company to the Buyer (oldest to most recent).

10. INCORPORATION OF PRODUCTS

- 10.1 If the Buyer uses the Products in some manufacturing or construction process of its own or on behalf of some third party and receives monies from time to time in respect of such use, then the Buyer must hold such monies received in trust for the Company.
- 10.2 The part referred to in clause 10.1 will be deemed to equal in dollar terms to the amount owing by the Buyer to the Company at the time of the receipt of such monies by the Buyer.
- 10.3 Money received by the Buyer excludes any debts due to other parties by the Buyer but not yet paid by the Buyer.
- 10.4 In the circumstances outlined in clause 10.1, the Buyer must not assign or deal with its debts in any way prior to payment of the moneys receivable by the Buyer in respect of the Products prior to their payment to the Company.

11. WARRANTY

- 11.1 If the Products are acquired by a consumer, the Company warrants that the Products will meet the consumer guarantees as set out in Part 3-2, Division 1 of Schedule 2 of the Competition and Consumer Act 2010 (Cth).
- 11.2 If the Products are not acquired by a consumer, the Company warrants:
- a) that the Products will be supplied in an undamaged condition; and
 - b) Products against defective materials and workmanship for 24 months from the date of transfer of risk.
- 11.3 Software is considered to have a material defect only if there are reproducible deviations from the specification in the datasheet or the operating instructions: The Buyer does not have a claim arising from or relating to:
- a) incorrect or negligent use of the software;
 - b) external factors including an unsuitable or unusual operating environment;
 - c) the use of the software beyond an interface intended by the Company for this purpose;
 - d) modifications made by the Buyer or third parties and their consequences; and
 - e) compatibility issues with the data processing environment used by the Buyer.
- 11.4 This warranty does not apply unless (all below provisions must apply):
- a) The Goods have been properly handled, located, used, maintained and stored;
 - b) Defects occur within 24 calendar months after the Goods have been delivered to the Buyer or, if delivery was delayed for reasons beyond the Company's control then within 24 calendar months of deliveries or within 24 calendar months after the Company first notified the Buyer that the Company was ready to deliver the Goods (whichever period expires earlier);
 - c) The Company is notified in writing within seven days of the alleged defect first coming to the notice of the Buyer;
 - d) The Buyer returns the defective Goods to the Company, or if necessary, at the sole discretion of the Company, to the works where such Goods were manufactured or assembled, free of charge; and
 - e) The Buyer has fulfilled all of his/its contractual obligations.
- 11.5 These warranties extend only to the Buyer and to no other person and are not transferable.
- 11.6 The provision of any act or law implying terms, conditions, guarantees and/or warranties which might otherwise apply to or arise out of the Contract are hereby expressly excluded to the full extent permitted by law.
- 11.7 On discovery of any defect in the Products, the Buyer must notify the Company in writing of such defect. All warranty claims must be received by the Company within seven (7) days of the day of discovery.
- 11.8 The Buyer's failure to provide written notice to the Company of any alleged breach of the above warranty within the required time will release and discharge the Company from any obligation or liability for that breach of warranty.
- 11.9 The Buyer must not carry out any remedial work to allegedly defective Products without first obtaining the written consent of the Company to do so, otherwise all of the Company's warranties will be voided to the full extent permitted by law.
- 11.10 Insofar as the expenses required for the purpose of carrying out the repair or replacement are increased by the fact that the Buyer has taken the goods to a place other than the place of performance after delivery, any additional costs incurred as a result shall be borne by the Buyer.

12. INTELLECTUAL PROPERTY

- 12.1 Unless expressly agreed otherwise, the Company is obliged to supply the Products free of third-party Industrial Property Rights only in the country of the place of manufacture and delivery. If a third party lodges claims on the grounds of a breach of its Industrial Property Rights related to the Products supplied by the Company, the Company will, within the period defined in clause 11.2b) and subject to clauses 12.2 and 12.3, be liable to the Buyer as follows:
- a) at the Company's discretion and expense, the Company will either obtain a right of use for the respective Product, modify the Product so that the Industrial Property Rights are not breached, or exchange the respective Product.
 - b) if the Company is unable to do this under reasonable conditions, the Buyer may terminate the Contract and the Company's liability is limited to a refund of the purchase price for the Products
- 12.2 The Buyer must immediately inform the Company in writing of the claims asserted by the third party, must not acknowledge a breach, and leave any protective measures and settlement negotiations to the Company's discretion.
- 12.3 The Company will not be liable if:
- a) the Buyer is solely responsible for the breach of the Industrial Property Rights; or
 - b) the breach of the Industrial Property Rights is caused by an application that was not foreseeable by the Company or caused by the fact that the Product was subsequently modified by the Buyer without authorization by the Company.

13. COMPANY'S LIABILITY LIMITED

- 13.1 The Buyer acknowledges and agrees that:
- the Buyer has determined that the Products are fit for the purpose for which the Buyer requires them;
 - the Buyer has not relied on the Company's skill and judgment in selecting the Products; and
 - the Company is not responsible if the Products do not comply with any applicable safety standard(s) or similar regulation(s), and the Company is not liable to the Buyer for any claim resulting from such non-compliance.
- 13.2 If the Terms or the provisions of the *Competition and Consumer Act 2010* (Cth), the *Sale of Products Act 1923* (NSW) or any other act or the general law impose on the Company a liability for a defect or fault in the Products then, to the extent to which the Company is entitled to do so, the Company's liability is limited, at the Company's option, to the:
- replacement or repair of the Products;
 - supply of equivalent Products;
 - refund of the purchase price for the Products; or
 - payment of the cost of replacing or repairing the Products or of acquiring equivalent Products or having the Services provided by a third party, and in any case, to the full extent permitted by law;
 - the Company will not be liable for any Excluded Loss or Damage; and
 - the Company's total liability to the Buyer is limited to the invoice value of the Products.

14. PRICES AND TERMS OF PAYMENT

- 14.1 Prices are determined by the Company's price list current at the time of order and are subject to change without notice.
- 14.2 Prices do not include GST, the cost of packaging, delivery, freight and insurance to the Buyer's nominated point of collection or delivery, unless specifically stated otherwise in writing.
- 14.3 An additional transportation surcharge of AUD 20 will be charged for each order; for orders containing linear transducers (BTL), an additional transportation surcharge of AUD 35 will be charged.
- 14.4 The Company may vary the Prices also after Order Acceptance to take account of:
- any alteration to the manufacturer's price list or quotation on which the Company calculated the Prices;
 - any changes in freight rates, insurance premiums, exchange rates, customs, levies, charges, imposts, rates of duty, and any other costs of supply; and
 - any alteration to the specifications of the Products which may be required by law;
 - Any other changes in the costs to the Company of performing its obligations under any contract with the Buyer by reason of the creation or amendment of any law or of any order regulation or by-law having the force of law or any applicable standard. The amount of such increase or decrease shall, as applicable be added to or deducted from the contract price;
 - Overheads and interests paid by the Company.
- 14.5 Exchange rate variation payable shall be calculated at the rate of exchange actually paid by the Company against the exchange rate in the quotation. If prices are expressed in different currencies and the Buyer seeks or requires payment in any different currency, the Buyer shall bear any foreign exchange risk arising from such payment.
- 14.6 Payments are to be made direct to the Company, strictly net, without any deduction or discount other than as stated in these Terms or in the relevant invoice or statement.
- 14.7 The Company offers the Buyer the following payment options:
- Downpayment:** The Buyer is obliged to transfer the invoice amount in accordance with the Buyer's individual payment terms and under any circumstance partly before the Company commences delivery. Delivery will only be made if we have received the partial payment. The Company shall provide the account details in the order acceptance.
 - Invoice:** For payment on invoice, the Buyer is obliged, unless expressly agreed otherwise, to transfer the invoice amount to the Company's account stated on the invoice in accordance with the Buyer's individual payment terms; and
 - Credit card:** The purchase price is due for payment as soon as the Buyer has placed the Order. The Company does not charge any additional fees for payments through credit cards, yet an additional fee may be charged by the Buyer's banker. The Company uses the „SSL“ transmission method for encrypting the Buyer's personal data.
- 14.8 Payment shall not be deemed to have been made before the Company has received the payment. Should the Buyer make default in respect of any payment due to the Company then the Company shall have the right, in addition to all other rights to which the Company is entitled at law, to: (a) charge interest on the overdue amount at three percent (3%) above the rate charged to the Company by the Company's major banker for overdraft accommodation and calculated from the due date of payment to the actual date of full and final payment. Any payment subsequently made by the Buyer to the Company shall be credited first against any interest so accrued; (b) suspend all deliveries or works and any contract period shall be extended by the period of the suspension; or (c) terminate the contract.
- 14.9 In the absence of any specific written direction to the contrary, payments will be credited against the oldest outstanding account of the Buyer with the Company to the most recent.
- 14.10 Without limiting any other right available to the Company at law or in equity, the Buyer must indemnify the Company from and against all costs and expenses incurred in enforcing any obligation under the Contract, including but not limited to legal costs on an indemnity basis.

15. INSPECTION

Unless the Buyer has inspected the Products and has given written notice to the Company within seven (7) days after collection or delivery that the Products do not comply with the relevant specifications or descriptions, the Products are deemed to have been accepted in good order and condition.

16. DEFAULT

If:

- 16.1 the Products are not paid for in accordance with these Terms, the Contract or any other written agreement between the Company and the Buyer; or
- 16.2 the Company receives notice of, or reasonably believes that a third party may attempt to levy execution against or attach the Products;
- 16.3 the Buyer or one or more of its directors is or are convicted of a crime of dishonesty;
- 16.4 a form of payment by the Buyer to the Company, such as a cheque, has been dishonoured for insufficient funds;
- 16.5 a writ for execution of judgment against the property of the Buyer in any court proceedings by any judgment creditor against the Buyer has been returned unsatisfied; or
- 16.6 any other event occurs which is likely to adversely affect the Buyer's ability to pay for the Products (including but not limited to the appointment of a receiver, receiver and manager, administrator, controller, liquidator, provisional liquidator, trustee or similar person [each an "insolvency representative"] to the Buyer's undertaking),

then the Company may

- a) charge interest on the overdue amount at three percent (3%) above the rate charged to the Company by its major banker for overdraft accommodation and calculated from the due date of payment to the actual date of full and final payment. Any payment subsequently made by the Buyer to the Company shall be credited first against any interest so accrued;
 - b) suspend all deliveries or works and any contract period shall be extended by the period of the suspension; or
 - c) at any time thereafter, without notice to the Buyer and without prejudice to any other rights which it may have against the Buyer, terminate any contract relating to the Products or Services.
- 16.7 An election to apply any one of the above remedies shall not preclude the Company from subsequently electing another of them.

17. RIGHT TO ENTER PREMISES

In any of the circumstances referred to in the preceding clause, the Buyer:

- 17.1 authorises the Company by itself, its agents or representatives, at all reasonable times, without notice, to enter onto (with force if reasonably necessary) and at all necessary time(s), to remain in and on any premises where the Products are located in order to collect the Products, without being guilty of any manner of trespass; and
- 17.2 assigns to the Company all the Buyer's rights to enter onto and remain in and on such premises until all the Products have been collected.

18. ADMINISTRATION, RECEIVERSHIP ETC.

In any of the circumstances referred to in clause 16.5:

- 18.1 neither the Buyer nor its insolvency representative or any other person acting for the Buyer and/or its creditors is entitled to sell, charge, remove, dispose of, use or otherwise deal with the Products in any way inconsistent with the Company's ownership of the Products, without the Company's prior written approval;
- 18.2 the Buyer, its insolvency representative or any other person acting for or on behalf of the Buyer and/or its creditors is obliged to re-deliver the Products to the Company immediately on the appointment of the insolvency representative at its or his expense;
- 18.3 if the Products are returned to or collected by the Company, the Company will within 28 days, account to the Buyer or its legal representative for all monies received for those Products from the Buyer, less the Company's reasonable administration charges, expenses incurred, and loss of profits involved; and
- 18.4 the insolvency representative will become personally liable to the Company on a full indemnity basis in respect of any dealings with or use of the Products by the Buyer or the insolvency representative occurring after the date of appointment of the insolvency representative and will account to the Company or reimburse the Company for all monies received as a result of such dealings or use of the Products.

19. BUYER AS TRUSTEE

If the Buyer carries on business as trustee of a trust, then the Buyer warrants that:

- 19.1 the Buyer enters into this Contract as trustee of the trust;
- 19.2 the Buyer has all requisite powers to enter into this Contract;
- 19.3 the beneficiary of the trust approves the purchase of the Products on these Terms; and
- 19.4 the assets of the trust are available to the Company in satisfaction of any debt incurred by the Buyer.

20. CUSTOMS DUTIES, TARIFFS AND LEVIES

All applicable customs duties, tariffs and levies are payable by the Buyer unless the Order Acceptance, invoice or other writing by the Company indicates otherwise.

21. CATALOGUES AND TECHNICAL DOCUMENTS

- 21.1 Particulars in leaflets, catalogues, drawings, brochures and other printed material supplied by the Company in relation to Products are for illustrative purposes only and are not binding on the Company.
- 21.2 All technical documents such as drawings, illustrations, descriptions, etc, are the exclusive property of the Company. They must not be made available to third parties, or copied, duplicated or used for reproducing any part of the Products.

22. SAMPLES

Any sample inspected by the Buyer is solely for the Buyer's convenience and does not constitute a sale by sample. All samples remain the property of the Company.

23. SPECIFICATIONS

- 23.1 Subject to clause 23.2, unless otherwise agreed in writing, the Products are supplied subject to any specification as to weight, quantity, size, dimensions, finishes, physical properties and chemical composition as may be published generally by the Company or as may be set out in any datasheet, operating instructions or specification issued by the Company in relation to the Products.
- 23.2 The Company may vary any specification as to weight, quantity, size, dimensions, finishes, chemical composition and physical properties as the Company considers is normally regarded as being commercially acceptable.
- 23.3 Where any specifications for the Products are to be supplied by the Buyer, they must be supplied in a reasonable time to enable the Company to complete delivery by the date for delivery.

24. PRIVACY

- 24.1 The Buyer acknowledges and agrees that the Company may collect, store and use personal information in relation to the Buyer or, if the Buyer is a company, its directors and officers, for the purposes of considering any credit application from the Buyer or any other purpose related and incidental to the business relationship between the Buyer and the Company.
- 24.2 The Company agrees that it will not disclose any personal information of the Buyer or its directors or officers to any third party except to obtain credit information concerning the Buyer, make an entry on the Buyer's credit report or to enforce these Terms.
- 24.3 The Company provides additional information within the framework of our [privacy statement](#).

25. GOVERNING LAW

- 25.1 The Contract for the supply of Products under these Terms is governed by the laws in the State of New South Wales, Australia and any cause of action is deemed to have arisen at the Company's place of business in Sydney, New South Wales.
- 25.2 The Buyer and the Company submit to the non-exclusive jurisdiction of the courts of New South Wales and courts that hear appeals from those courts.

26. WAIVER OF BREACH

No failure by the Company to insist on strict performances of any of the terms in these Terms is a waiver of any right or remedy which the Company may have and is not a waiver of any subsequent breach or default by the Buyer.

27. NO ASSIGNMENT

Neither this Contract nor any rights arising under this Contract may be assigned by the Buyer without the prior written consent of the Company which is at the Company's absolute discretion.

28. SEVERABILITY

If any provision contained in these Terms is held by a court to be unlawful, invalid or unenforceable, the validity and enforceability of the remaining provisions are not affected.

SUPPLEMENTARY SOFTWARE CONDITIONS

29. PREVALENCE

- 29.1 For the use of separately purchased software („Software as a Product“), the Company's:
- Terms and Conditions for the licensing of standard software for a fee;
 - Terms and Conditions for the free licensing of standard software or
 - Terms and Conditions for the adaption of standard software (customizing) in return for a fee,
- will apply and if there is any inconsistency between them then the above listed Terms and Conditions will prevail over the Terms.
- 29.2 Insofar as software is included in the scope of delivery of a Product and this is made available for use, whether for payment or free of charge, the following provisions will apply in addition, and if there is any inconsistency with regard to software between them and the Terms then the following provisions will take precedence.

30. RIGHTS OF USE

- 30.1 The Company grants the Buyer the non-exclusive right to use the software for its intended purpose. The scope of intended use can be found in the respective software datasheet or the operating instructions for the software. The right of use is limited to the agreed period, in the absence of such an agreement the right of use is for an indefinite period.
- 30.2 The Buyer may only use the software with the hardware stated in the datasheet or the operating instructions, in the absence of such reference only with the Product delivered together with the software. The use of the software with another device requires the Company's prior written consent; in the case of culpable breach of this obligation, the Company is entitled to demand an appropriate additional remuneration. Further claims remain unaffected thereby.
- 30.3 If several devices are mentioned in the datasheet or operating instructions, the Buyer may only use the software on one of these devices at the same time (single licence), unless a multiple licence has been granted. If there are several workstations for one device where the software can be used independently, then the single licence only covers one workstation.
- 30.4 The licensing of the software is effected solely in machine-readable format (object code).
- 30.5 The Buyer may make a single copy of the software which can be used for backup purposes only (backup copy). Apart from that, the Buyer may only copy the software if a multiple licence has been granted.
- 30.6 The Buyer is not entitled to change, reverse engineer, or translate the software, or remove parts thereof. The Buyer may not remove alphanumeric and other identifications from the data carriers. They are to be transferred unmodified to every backup copy.

- 30.7 If there is good cause, the Company grants the Buyer the revocable right to transfer the right of use to the software to third parties. A transfer to a third party may only be effected together with the Product that the Buyer purchased in connection with the software. In the case of a transfer of the right of use to third parties, the Buyer must ensure that no further rights of use to the software are granted to the third party other than the Buyer is entitled to according to these supplementary software conditions and those in the respective datasheet or the operating instructions, and that the third party will be obliged to comply with at least the same obligations as are imposed herein with regard to the software. In the case of a transfer, the Buyer may not retain any copies of the software.
- 30.8 The Buyer is not entitled to grant sublicences.
- 30.9 If the Buyer transfers the software to a third party, then the Buyer is responsible for compliance with any export requirements and must indemnify the Company against any and all failures to do so.
- 30.10 Provided that the Company grants a licence for software to the Buyer, for which the Company only have a derived right of use (third-party software), the terms of use agreed between the Company and the licensor will apply in addition to the provisions of this clause and also take precedence. If and to the extent that the Company licences the Buyer open-source software, the terms of use governing the open-source software will apply in addition to the provisions of this clause and also take precedence. The Company may refer to the existence and terms of use of licensed third-party and open-source software in the datasheet or the operating instructions, as well as give the Buyer access to the terms of use upon request. In the case of a breach of these terms of use, as well as ourselves, the Company's licensor is also entitled to assert any and all claims and rights in their own name.
- 30.11 For using the software on several devices or simultaneously at several workstations, the Buyer requires a right of use to be agreed separately. The same will apply to the use of the software in networks, even if the software is not copied. In those multiple licence cases, the following provisions will apply in addition to the other provisions in this clause and also take precedence:
- A prerequisite for a multiple licence is express written confirmation from the Company about the number of permissible copies which the Buyer may create of the software, and about the number of devices or workstations on which the software may be used. For multiple licences clause 0 applies, however, on condition that the multiple licences may only be transferred by the buyer to third parties if they are transferred together and with all devices on which the software may be used.
 - The Buyer must observe the instructions on copying provided by the Company together with the multiple licence. The Buyer must keep logs of the locations of all copies and present these to the Company on request.

31. TRANSFER OF RISK

When software is licensed using electronic communication media, for example via the Internet, the danger of accidental loss and accidental deterioration of the software will pass to the Buyer at the time of download.

32. OBLIGATIONS TO COOPERATE AND LIABILITY

- 32.1 The Buyer must take all necessary and reasonable measures to prevent or restrict damage by the software. In particular, the Buyer must ensure the regular backup of programs and data.
- 32.2 If the Buyer breaches this obligation, the Company will not be liable for the consequences, particularly not for the replacement of lost or damaged data or programs.

33. MATERIAL DEFECTS

- 33.1 The parties agree that software generally cannot be created without errors; this also applies to the software covered by these terms and conditions.
- 33.2 Material defect claims related to the software become time-barred within 12 months of the transfer of risk.
- 33.3 Software is considered to have a material defect only if the Buyer can prove that there are reproducible deviations from the specification in the datasheet or the operating instructions. A material defect does not exist if it does not appear in the version of the software last transferred to the Buyer and its use is deemed reasonable for the Buyer.
- 33.4 Material defect claims do not exist:
- for damage arising as a result of incorrect or negligent use of the software;
 - for damage arising from special external factors that are not preconditions in accordance with the Contract;
 - for modifications made by the Buyer or third parties and the consequences;
 - for software expanded by the Buyer or a third party beyond an interface envisaged by the Company for this purpose; or
 - in a situation where the software is not compatible with the data processing environment used by the Buyer.
- 33.5 The claim for supplementary performance is fulfilled as follows in the case of software:
- The Company provides the Buyer with a new edition (Update) or
 - a new version (Upgrade) of the software,
 - provided the Company has such or it can be procured by the Company at a reasonable cost.

34. INDUSTRIAL PROPERTY RIGHTS AND COPYRIGHTS – DEFECTS OF TITLE

- 34.1 If a third party lodges claims on the grounds of a violation of intellectual property in relation to the software, the Company shall be liable according to Clause 12. within the period defined in Clause 33.2.

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