

GENERAL TERMS AND CONDITIONS FOR THE SUPPLY OF PRODUCTS AND SERVICES

1. Definitions

1.1 In these terms and conditions:

- (1) "**company**" means Strategic Innovations Consulting Pty Ltd;
- (2) "**contract**" means the contract made between the customer and the company by the customer placing an order with the company and the company accepting the order in writing.
- (3) "**customer**" means the other contracting party;
- (4) "**GST**" means any tax in the nature of a tax on the supply of goods, real property, services or other things (or similar tax) levied, imposed or assessed by the Commonwealth of Australia or any State or Territory of Australia, which may operate at any time during the currency of this contract, other than interest, fine, penalty, fee or other payment imposed on or in respect of such tax.
- (5) "**order**" means the order placed by the customer with the company for the products or services specified in the quotation, in a form acceptable to the company;
- (6) "**products**" includes all the goods supplied by the company and specified in a quotation;
- (7) "**quotation**" means the quotation for products and services attached to these terms and conditions;
- (8) "**services**" means all the services supplied by the company specified in a quotation;
- (9) "**supply**" means any form of supply including any supply within the meaning of any Commonwealth, State or Territory legislation imposing, or relating to the imposition of GST.

2. General

2.1 These conditions form a part of the contract between the company and the customer. The order shall be deemed to be placed subject to these terms and conditions and no variation of these terms and conditions is applicable unless expressly accepted in writing by the company. The company's acknowledgment of the order shall not constitute such acceptance.

3. Validity

3.1 The quotation is valid for a period of thirty (30) days from the date of the quotation unless otherwise stated or unless revoked by the company and, in any event, the order is subject to written acceptance by the company.

4. Prices

4.1 Unless otherwise stated all prices in the quotation are in Australian Dollars, exclusive of all government charges, freight and installation. In addition to the prices in the quotation, the customer must pay any applicable government charges, freight and installation charges as notified by the company.

4.2 Where any supply under this contract is or becomes subject to a GST, an amount equal to the GST paid or payable for that supply will be added to the amount exclusive of GST paid or payable for that supply under this contract.

4.3 Each party agrees to do all things, including providing invoices and other documentation that may be necessary or desirable to enable or assist the other party to claim any credit, set-off, rebate or refund in relation to any amount of GST paid or payable for any supply under this contract.

5. Price Adjustment

5.1 The company reserves the right at any time prior to delivery of the products or provision of the services to vary the price quoted for the products or services if following the date of the quotation there is any change in rates of exchange, any imposition or alteration of Government tax, increase in the cost including anticipated costs of materials, labour or transport, or if the cost including anticipated costs of supplying the products or services is increased by any other factor. No such variation will entitle a customer to cancel an order.

6. Payment

6.1 Payment terms are specified on the quotation.

6.2 If the customer fails to pay an invoice on the due date for payment as required by clause 6.1, the customer must pay to the company interest at the rate of 10% per annum, calculated and payable daily, computed from the due date until the amount due is paid in full

7. Delivery and Risk

7.1 Unless otherwise specified, delivery shall be deemed to take place when the products have been delivered to the customer's premises or other specified delivery point.

7.2 Risk in the products passes to the customer upon delivery of the product. Where installation is included in the price, risk passes to the customer upon completion of installation by the company.

7.3 If special packing or shipping instructions are agreed, charges will be billed separately to the customer and risk of loss and damage will pass to the customer on delivery to the customer's carrier.

7.4 All dates and times specified to the customer for delivery and installation of the products and provision of the services are estimates only and the company shall not be liable for delay or any damages or losses sustained by the customer as a result of such dates or times not being met. The customer shall not be entitled to refuse acceptance of the products or services as a consequence of such delay.

7.5 The company may in its absolute discretion withhold delivery of some or all of the goods or any installation or services pending payment of any sum due from the customer to the company under this or any other contract.

7.6 If the customer does not accept delivery of products or services at the agreed date, then:

- (1) the company shall be entitled to claim payment for the products or services refused;
- (2) the products refused shall be in all respects at the customer's risk;
- (3) the cost of storing the products shall be borne by the customer.

7.7 Forwarding instructions, where required, shall be provided by the customer not later than seven (7) days after being advised that the products are ready for despatch. If no forwarding instructions are received within this period the company shall be entitled to charge for storage at its then current storage rates.

7.8 All claims by the customer that the products were delivered short must be made in writing within seven (7) days of receipt of the delivery.

8. Damage or Loss in Transit

8.1 The company will at its discretion either refund the cost or replace or repair free of charge any products proved to the company's satisfaction to have been lost or damaged in transit up to the moment of delivery provided that within three (3) days of receipt of the products in the case of damage or within ten (10) days of receipt of invoice in the case of loss, the customer notifies both the carrier and the company in writing of the nature and extent of the damage or loss.

8.2 The company accepts no liability for delay in transit or where special packing or shipping instructions have been agreed. Unless the products are checked by the customer on receipt, the carrier's documentation must be endorsed "unexamined".

9. Title

9.1 Title to products will not pass until all money due to the company on any account has been paid in full. Until all payments have been made to the company, the customer holds the product as bailee for the company and must safely and securely store the product. The customer shall ensure that it does all things necessary to separately identify the product at all times.

9.2 In the event of seizure by a third party or any other act of a third party affecting the company's interest in the product, the customer shall notify the company immediately in writing.

10. Specifications

10.1 The products delivered will be generally in accordance with the specifications detailed in the quotation. The company will not entertain claims based on non-compliance with any other specification.

10.2 All specifications, drawings, and technical descriptions submitted with or in connection with any quotation given by or other correspondence from the company are the company's copyright. All such copyright material, and all information and "know-how" whenever supplied shall at all times be treated by the customer as confidential and shall not without the consent of the company be used by the customer except for the purpose of the contract and the operation of the products supplied thereunder, nor shall they without the consent of the company be communicated to third parties save insofar as may be necessary for the purposes stated above.

11. Warranty

11.1 The company does not warrant that the operation of the products will be uninterrupted or error free.

11.2 Any products which are found to the company's satisfaction to be defective as a result of faulty design, manufacture or workmanship will at the sole discretion of the company be replaced free of charge or repaired free of charge provided that:

- (1) products are received at the company's works within twelve (12) months from the date of delivery, as defined in clause 7;
- (2) the products have not been misused, mishandled, overloaded, amended or repaired in any way by a person not approved by the company, or used for any purpose other than that for which they were designed;
- (3) if the products have been manufactured to the customer's design, the defects are not as a result of faulty design of the customer; and
- (4) in the case of products not of the company's manufacture, any warranty shall be limited to that given to the company by the manufacturer thereof.

11.3 The customer is responsible for returning faulty equipment to the company. Freight and insurance shall be prepaid by the customer and the company accepts no risk in respect of products which are being returned.

11.4 The warranties given in this clause 11 are additional to any non-excludable warranties implied into this contract by Act of Parliament.

11.5 The warranties given in clause 11 are the only warranties given by the company and any other claims (other than claims for death or personal injury attributable to the negligence of the company, its agents or employees) relating to any express or implied warranties or conditions, including as to quality and fitness for purpose of the products, is hereby expressly excluded. Unless specifically agreed, the company does not warrant that the products are suitable for any particular application.

12. Liability

12.1 The company shall not be under any liability for any loss of profit, contingent or consequential loss, damage or injury to the customer howsoever arising.

12.2 The company will not be liable for:

- (1) damage or loss to products occurring during transit;
- (2) the cost of labour involved with the removal and/or reinstallation of the product or parts on site, or labour costs with diagnosing the necessity for replacement or repair;
- (3) the cost of expendable components such as rubber items or flexible leads; or
- (4) damage due to normal wear and tear.

12.3 Subject to clause 12.1 and 12.2, in the event of the company being found liable for any loss or damage arising out of the products or services, its total liability shall not under any circumstances exceed, for any breach or breaches, the total price of the products or services.

12.4 If the customer is a consumer of goods or services for the purposes of the *Trade Practices Act 1974* as amended ("**TPA**") and similar State and Territory legislation, it will have the benefit of certain non-excludable rights and remedies in respect of these terms and conditions. Subject to the provisions of Section 68A of the TPA and similar provisions of State and Territory legislation, the company may limit its liability to any one or more of the measures set out in the TPA and such other legislation in respect of the supply by it of goods or services under these terms and conditions, but its liability under that legislation will be subject always to an overall financial limit of the cost of the products or services.

12.5 Except as provided in clause 12.4, the company's total liability under these terms and conditions to the customer whether in contract, tort (including negligence) or otherwise, is to the extent permitted by law expressed in this clause and the Company has no further or other liability to the customer, whether for consequential loss or any other loss.

12.6 The customer shall indemnify and keep indemnified the company, its officers, employees and other contractors or agents from and against all actions, proceedings, claims and demands whatsoever which may be brought or made against it, them or any of them by any person to the extent it arises out of:

- (1) any fault, negligence, wrongful act or omission of the customer or any of its servants, employees or agents; or
- (2) death, injury, loss, or damage to the customer's servants, employees, or agents arising out of these terms and conditions not caused by the fault, negligent, wilful act or omission of the company or any of its servants, employees, or agents.

12.7 If there is a dispute arising out of these terms and conditions other than in relation to payment for the products or services, either party may give written notice of the dispute to the other party and the dispute must be referred to an appropriate expert for determination as agreed between the parties.

13. Patent Indemnity

13.1 If the customer is threatened with any action alleging that the product in the form sold infringes any Australian Patent or Registered Design then provided that the customer was not at fault, promptly informs the company in writing and in cases where the company so requests allows the company to defend any action on the customer's behalf, then in all cases the company will indemnify the customer against any award of damages and costs against the customer arising from such action.

13.2 The above indemnity is given by the company in lieu of any or all other liabilities the company might have in relation to any action against the customer for infringement of patent or other proprietary rights and under no circumstances will the company be liable for any loss of profit, contingent or consequential loss however arising.

13.3 The company has no obligation for any claim of infringement arising from the company's compliance with the customer's design, the customer's modification of the products, its operation or use in combination with other products not provided by the company or infringement by products not supplied by the company.

14. Consents

14.1 It shall be the responsibility of the customer to obtain any consent necessary for the importation of the products into the customer's country. Such consent shall be obtained at the customer's expense. Any contract shall be conditional upon the company obtaining any consent necessary for the export of the products from Australia and/or from their country of origin.

15. Termination

15.1 Without prejudice to any claim or right it might otherwise make or exercise, the company shall have the right forthwith to terminate this contract by notice in writing to the customer and to claim for any losses, costs or expenses thereby incurred if:

- (1) the customer commits any breach of any term of these terms and conditions; or
- (2) the customer fails to make any payment when it is due;
- (3) the customer makes or offers to make any arrangement or composition with creditors; or
- (4) the customer is an individual, commits any act of bankruptcy, or any petition or receiving order in bankruptcy is presented or made against the customer; or
- (5) the customer is a company, any resolution or petition to wind up such company is passed or presented otherwise than for reconstruction or amalgamation; or
- (6) a liquidator, receiver, receiver and manager or administrator of the customer's undertaking, property or assets or any part thereof is appointed.

16. Force Majeure

16.1 Neither party shall be under any liability to the other for any breach of any provision hereof or failure on its part to perform any obligation (other than to pay money) as a result of Force Majeure, which for the purposes of these conditions means and includes, but is not limited to, acts of God, acts of terrorism, war (whether declared or not), sabotage, riot, explosion, Government control, restrictions or prohibitions or any other Government act or omission whether local or national, fire, blackout, accident, earthquake, storm, flood, epidemic, drought, or other natural catastrophes, inability to obtain equipment, suitable raw materials, component, fuel, power or transportation, disputes with workmen, strikes or lockouts, shortage of labour or any other cause beyond the control of such party.

16.2 If either party is unable to perform any of its obligations under the contract by reason of any of the causes referred to in clause 16.1, then that party shall forthwith notify the other party in writing of the estimated extent and duration of such inability.

16.3 In the event that the customer is unable to perform its obligations under the contract by reason of any of the causes referred to in clause 17.1 for a period of six (6) months or more then the company may at any time after the expiration of such six (6) month period terminate the contract by written notice.

17. Prior representations

17.1 These conditions supersede all previous conditions, understandings, commitments, agreements or representations whatsoever whether oral or written and shall not be varied except with the company's prior written consent.

18. Notices

18.1 Any notice required to be given hereunder shall be sufficiently given if sent by registered post or fax to the recipient at its registered office or last known address and shall be deemed to have been properly served at the time when in the ordinary course of transmission it would reach its destination.

19. Governing Law

19.1 The conditions and the contract shall be governed, construed and shall take effect in accordance with the laws of New South Wales, Australia and any dispute arising hereunder shall be determined by a Court of competent jurisdiction in New South Wales.

20. Amendments or Cancellations

20.1 Once accepted by the company, no order can be amended or cancelled except with the company's written approval and upon terms, which indemnify the company against any losses including loss of profit or additional costs resulting therefrom. In particular, additional costs incurred because of any alterations made at the customer's request to quantities, delivery dates, rates or specifications shall be borne by the customer.

21. Severability

21.1 Any contract entered into by the company shall be regarded as severable in the event of products being of different kinds or the contract providing for delivery by instalments. Each and every delivery of separate items under the contract shall be regarded as being made under a separate contract and damages arising from any alleged breach of contract shall be limited accordingly.

22. Headings

22.1 The headings in these conditions shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction hereof or of the contract.

23. Assignment

23.1 The customer may not assign, sub-contract or license any rights or obligations hereunder without the prior written consent of the company.

23.2 The company may assign, sub-contract or license any rights or obligations under this contract at any time.