

STANDARD TERMS AND CONDITIONS OF SALE

THE FOLLOWING TERMS AND CONDITIONS FORM THE BASIS FOR EVERY CONTRACT CONCLUDED WITH THE SUPPLIER AND THE ACCEPTANCE BY A CUSTOMER OF ANY GOOD SHALL COMPRISE ACCEPTANCE OF THESE TERMS.

1 SALE AND PURCHASE

The Supplier agrees to sell, and the Customer agrees to purchase, the Goods on the terms of these Terms and Conditions.

2 QUOTATIONS

(a) Unless otherwise indicated on the quote, written quotations provided by the Supplier shall automatically expire 30 days after the date appearing on the quotation unless the Customer receives and accepts the quotation, by issuing an Order, within that period.

(b) Prior to the expiration date any quotation is subject to change by the Supplier at any time upon verbal or written notice to the Customer.

3 ORDERS, ORDER ACKNOWLEDGMENTS AND CONTRACT

(a) An order or an offer to purchase Goods (each, an **Order**) may be made by the Customer in writing or verbally.

(b) The Customer acknowledges that the placing of an Order means that the Customer has had proper and adequate notice of these Terms and Conditions and that the Customer has read and accepted (and has had proper and adequate opportunity to do the same) these Terms and Conditions before providing the Order.

(c) An Order is accepted when the Customer receives from the Supplier an acknowledgement of that Order (**Order Acknowledgment**) in writing or if writing is not received, acknowledgment verbally or delivery, whichever first occurs.

(d) When an Order is accepted by an Order Acknowledgment, the Contract will be wholly documented by (in descending order of precedence) any specific term(s) agreed in writing (including the Scope of Work), the Order Acknowledgment and these Terms and Conditions.

(e) Previous dealings between the Supplier and the Customer shall not have any effect on the Contract.

(f) Trade custom and/or trade usage is superseded by the Contract and shall not be applicable in the interpretation of the Contract.

(g) A Contract constitutes the entire agreement between the Supplier and the Customer with respect to the Goods supplied under the Contract, all prior negotiations, proposals and correspondence are superseded by that Contract and these Terms and Conditions will in all circumstances prevail over the Customer's terms and conditions of purchase (if any).

4 PRICES

(a) Unless otherwise agreed in writing, the price charged for the Goods shall be:

(i) exclusive of any Transaction Tax; and

(ii) as per the price determined by the Supplier at the date of delivery. Any price indications or price lists issued or released by the Supplier from time to time are subject to alteration in accordance with the price determined by the Supplier as at that date of delivery.

(b) Where a Transaction Tax applies to any supply made under these Terms and Conditions, the Supplier may recover from the Customer an additional amount on account of that Transaction Tax.

(c) Unless otherwise stated, the price charged for the Goods in a tax invoice issued by the Supplier to the Customer does not include the Excluded Charges. The Customer acknowledges that the Customer is responsible for the payment of the Excluded Charges.

(d) The Customer acknowledges that the costs of any additional inspections or tests other than those normally carried out by the Supplier in respect of the Goods will be charged to the Customer, and the Customer agrees to pay for the same.

(e) the Supplier may recover Collection Costs from the Customer without notice or provision of any evidence thereof to the Customer and such amounts shall without notice form part of, and be due and payable at the same time and in the same manner as, the price charged for the Goods.

(f) Notwithstanding any provision in the Contract, the Supplier may increase the price of Goods after an Order Acknowledgment and prior to delivery of the Goods if the price increase results from an increase in the price of any inputs which comprise part of the Goods.

(g) The Parties acknowledge and agree that any anticipated prices, fees or amounts stated by the Supplier to the Customer for the Goods during the term of the Contract are estimates only and not quotes (unless explicitly stated otherwise by the Supplier). Where the Goods relate to the provision of services, the Supplier's prices are function of time spent to complete the Order. These prices may be affected by factors beyond the Supplier's control and therefore cannot be ascertained or taken into account at the commencement of the Contract.

5 DELIVERY

(a) The Supplier will make all reasonable efforts to have the Goods delivered to the Customer or its designated agent as agreed between the Parties (or if there is no specific agreement then at the Supplier's reasonable discretion), but the Supplier shall not be liable for:

(i) liquidated damages;

(ii) any failure to deliver or delay in delivery for any reason; or

(iii) any damage or loss due to unloading or packaging; or

(iv) damage to property caused upon entering premises to deliver the Goods.

- (b) Any costs incurred by the Supplier due to any failure by the Customer to accept the Goods at time of delivery will be reimbursed by the Customer to the Supplier. Except as required by law or the Terms and Conditions, the Supplier will be under no obligation to accept Goods returned for any reason.
- (c) The Customer acknowledges and agrees that time is not of the essence in relation to delivery of the Goods and that it must accept and pay for the Goods even if they are delivered after a requested time.
- (d) The Customer acknowledges that the Customer must not cancel any Contract:
 - (i) without the prior written consent of the Supplier; or
 - (ii) on terms that will indemnify the Supplier for all costs, expenses and losses and damages incurred by the Supplier as a result of the cancellation of the Contract.
- (e) The Customer acknowledges that:
 - (i) the Supplier may in its absolute discretion charge a restocking fee if the Customer cancels an Order after it has been accepted by the Supplier and an Order Acknowledgement has been issued;
 - (ii) the restocking fee will be a minimum of 10% of the total value of the Order, but subject to Clause 5(e)(iii) may be up to 40% of the total value of the Order;
 - (iii) the restocking fee charged will depend on how far the Order has progressed through the Supplier's procurement, production and delivery processes.
- (f) Subject to a valid product warranty claim, the Customer acknowledges that the Supplier is not under any obligation to accept Goods returned by the Customer.

6 DEPOSIT AND SECURITY

- (a) The Supplier may request the Customer for an amount of money or other security (including a credit card reservation) to be held as a deposit (**Deposit**) for payment for the Goods (or part thereof).
- (b) The Customer shall forfeit the Deposit to the Supplier if the Customer for any reason cancels its Order for the Goods.
- (c) If the Deposit provided by the Customer is a credit card reservation, the Customer unconditionally authorises the Supplier to debit the Deposit from the Customer's nominated credit card without notice pursuant to this Clause 6.

7 PAYMENT

- (a) Subject to Clause 13, payment for the Goods must be made in full (without any set off except as made by the Supplier) and received by the Supplier by the Due Date for Payment unless otherwise identified by the Supplier on any statement of account or invoice.
- (b) Payment is only received by the Supplier when it receives cash or when the proceeds of other methods of payment are credited and cleared to the Supplier's bank account.

- (c) All payments must be made in the currency specified by the Supplier. Where a currency is not specified in the invoice to the Customer, the default currency for payment will be Australian Dollars (\$AUD).
- (d) All payments will be:
 - (i) For sales to Customers whom the Supplier have approved a credit account under Clause 13 – by cash or electronic funds transfer by the Due Date for Payment; or
 - (ii) For Sales to Customers whom the Supplier have not approved a credit account under Clause 13, – by electronic funds transfer prior to the Goods being dispatched by the Supplier, unless otherwise agreed between the parties in writing.
- (e) If the Customer has provided its credit card details to the Supplier, the Customer unconditionally authorises the Supplier to debit the Customer's credit card without notice for the amount of payment of the Goods.
- (f) The Customer must advise the Supplier of all payment disputes in writing by email at *enquiries@totalce.com.au* within 7 days from delivery of the Goods, unless otherwise agreed in writing by the Supplier. Payments disputes after this time will not be accepted by the Supplier.

8 TITLE AND RELATED MATTERS

- (a) The legal and equitable title to the Goods will only be transferred from the Supplier to the Customer when the Customer has met and paid all that is owed to the Supplier on any account whatsoever.
- (b) The Customer acknowledges that until the Customer has met and paid all that is owed to the Supplier on any account whatsoever, the Customer holds the Goods as bailee for the Supplier and that a fiduciary relationship exists between the Customer and the Supplier.
- (c) Until the Supplier receives full payment of all monies due to it from the Customer, the Customer shall keep the Goods separate and in good condition as fiduciary of the Supplier, clearly showing the Supplier's ownership of the Goods and shall keep books recording the Supplier's ownership of the Goods and the Customer's sale or otherwise of them in accordance with Clauses 8(e) and 8(f). The Customer, if required, shall deliver the Goods up to the Supplier.
- (d) If the Customer breaches these Terms and Conditions, in addition to its remedies set forth in Clause 10(b), the Supplier may take possession of the Goods (at the cost and risk of the Customer) wherever the Goods are located and the Customer agrees that representatives of the Supplier may enter upon the Customer's premises for that purpose.
- (e) Despite Clause 8(a), the Customer may sell as fiduciary (but not agent) for the Supplier the Goods to a third party in the normal course of the Customer's business provided that where the Customer is paid by that third party, the Customer holds the proceeds of sale to the extent of the amount owing by the Customer to the Supplier at the time of receipt of such proceeds on trust for the Supplier. The Customer must keep those proceeds separately on trust for the Supplier and not mix those proceeds with any other monies. Where the Customer has not been paid for the Goods by the third party, the Customer holds the debt owing to it by the third party in respect of the sale of the Goods upon trust for the Supplier and must assign

that debt to the Supplier at the direction of the Supplier.

- (f) If the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as related to the Goods on trust for the Supplier. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to the Supplier at the time of the receipt of such proceeds. The Customer must keep that part of the proceeds separate on trust for the Supplier and not mix those proceeds with any other monies.
- (g) Notwithstanding the above, the Customer is still required to pay the Supplier for Goods already delivered and for Goods manufactured or ordered to specification and not yet delivered.
- (h) If, at any time, the Supplier wishes or is required to take any further steps to protect its interest in the Goods under this Clause, for example by registering its interest, the Customer agrees to provide any assistance which may be required by the Supplier for that purpose.

9 PPSA

- (a) This Clause applies to the extent that this Contract comprises a PPS Security.
- (b) The Supplier may register any PPS Security which arises under this Contract.
- (c) The Customer must do all things (such as obtaining consents and signing documents), which the Supplier requires in writing, for the purposes of:
 - (i) ensuring that such PPS Security is enforceable, perfected and otherwise effective under the law (including the PPSA);
 - (ii) ensuring that the Supplier has first ranking priority (or such other priority required by the Supplier) in respect of such PPS Security; and
 - (iii) ensuring that the Supplier is able to exercise its rights in connection with such PPS Security.
- (d) The Customer must reimburse the Supplier for, and pay on demand to the Supplier, the Supplier's cost of doing anything under this Clause.
- (e) The rights of the Supplier under this Clause are in addition to and not substitution for the Supplier's rights under any law (including the PPSA).
- (f) This Agreement does not limit the Supplier's rights under the law (including the PPSA) in any manner.
- (g) The Supplier may choose whether to exercise its rights under this Contract and/ or under any law and the manner of such exercise in its absolute discretion.
- (h) To the extent that the PPSA applies to this Contract and to the extent that this Contract is not in respect of a PPS Security in collateral that is not used predominantly for personal, domestic or household purposes, the following provisions of the PPSA do not apply to this Contract and for the purposes of s 115 of the PPSA are contracted out of by this Contract, to the following extent:

- (i) s 95 PPSA, but only to the extent that it requires the Supplier to give a notice to the Customer;
 - (ii) s 96 PPSA, but only to the extent that it would permit a person to retain an accession (as defined in the PPSA) in priority to the rights of the Supplier;
 - (iii) if the Customer has granted an encumbrance over an interest in land in favour of the Supplier, s 117 PPSA, but only to the extent that it requires the Supplier to act reasonably and take into account the matters described in s 117(3) PPSA;
 - (iv) if the Customer has granted an encumbrance over an interest in land in favour of the Supplier, s 118, but only to the extent that it requires the Supplier to give notice to the Customer;
 - (v) s 121(4) PPSA, but only to the extent that it requires the Supplier to give notice to the Customer;
 - (vi) s 125 PPSA, but only to the extent that it requires the Supplier to dispose of or retain collateral;
 - (vii) s 129(2) PPSA, but only to the extent that the Supplier is required to comply with the procedure therein;
 - (viii) s 129(3) PPSA, but only to the extent that the Supplier is required to comply with the procedure therein;
 - (ix) s 130 PPSA, but only to the extent that it requires the Supplier to give notice to the Customer;
 - (x) s 132(3)(d) PPSA, but only to the extent the Supplier is required to give a statement of account under s 132(1) PPSA;
 - (xi) s 132(4) PPSA, but only to the extent that it requires the Supplier to give a statement of account;
 - (xii) s 135 PPSA, but only to the extent that it requires the Supplier to give a notice under that section;
 - (xiii) s 123(4) PPSA, but only to the extent that section limits the right of the Supplier to enter land or a water source (as defined in the PPSA);
 - (xiv) s 142 PPSA, but only to the extent that a person may redeem collateral secured by a PPS Security in favour of the Supplier; and
 - (xv) s 143 PPSA, but only to the extent that a person may reinstate a PPS Security against the Owner.
- (i) For the avoidance of doubt, the provisions of s 120, s 123, s 126, s 128, s 129 and 134(1) of the PPSA apply to this Contract to the extent they grant rights to the Supplier;
 - (j) If there is a default by the Customer, the Supplier may, in its absolute discretion, seize, purchase, take possession of, take apparent possession of, retain, deal

with or dispose of any personal property under this Contract (in addition to, and independent of, any rights of the Supplier under any law (including the PPSA)). The Supplier may exercise such powers in any manner (at the Owner's absolute discretion) including by private sale, public sale, lease or licence.

- (k) The Customer waives its right to receive a verification statement (as defined in the PPSA) for registration events (as defined in the PPSA) for commercial property (as defined in the PPSA) under s 157 PPSA.
- (l) The Supplier and Customer agree that the matters which might be required to be disclosed under s 275 (1) PPSA is confidential information of the Supplier and the Customer will not disclose such confidential information:
 - (i) except with the written consent of the Supplier;
 - (ii) to perform the Customer's obligations under this Contract;
 - (iii) for the limited purpose of obtaining advice from an accountant, legal practitioner or similar advisor; or
 - (iv) as otherwise required by law (except s 275(1) PPSA to the extent excluded by this Clause).
- (m) The Customer must use best endeavours to ensure that s 275(6)(a) PPSA continues to apply in favour of the Owner. The Agreement in this Clause is made solely for the purposes of allowing the Supplier the benefit of s 275(6)(a) and the Supplier shall not be liable to pay damages or any other compensation or be subject to injunction if the Supplier breaches this Clause.

10 DEFAULT

- (a) The Customer will be in default if:
 - (i) the Customer fails to perform in whole or in part any of its obligations under, or is in breach in whole or in part of any of, the Terms and Conditions;
 - (ii) payment for the Goods has not been received by the Supplier by the Due Date for Payment;
 - (iii) the Customer being an individual commits an act of bankruptcy, dies or becomes permanently incapacitated or becomes an insolvent under administration;
 - (iv) the Customer being a body corporate becomes insolvent, an externally-administered body corporate or has an application for winding up filed against it;
 - (v) the Supplier forms the opinion that the Customer's credit worthiness or credit standing alters from that indicated in its Application.
- (b) If the Customer defaults, in addition to any other rights at law the Supplier may have, the Supplier may take one or more of the following actions:
 - (i) treat the whole of the Contract and any other contract with the Customer as repudiated and sue for breach of contract; and/or

- (ii) refuse to supply any Goods to the Customer (including suspending any further deliveries of Goods to the Customer); and/or
 - (iii) claim the return of any Goods in the Customer's possession where title has not passed to the Customer. (the Supplier, for that purpose, may without notice enter any premises occupied by the Customer where those Goods are held and remove those Goods); and/or
 - (iv) without notice to the Customer suspend or withdraw any credit facility the Supplier has provided to the Customer entirely, or exclude one or more Contracts from the benefit of the credit facility, or vary the Period of Credit for one or more Contracts, or vary the Credit Limit; and/or
 - (v) without notice to the Customer, claim the Deposit (if any) and for this purpose the Customer hereby releases and forfeits such Deposit to the Supplier absolutely; and/or
 - (vi) without notice to the Customer, require the Customer to pay default interest to the Supplier pursuant to Clause 23; and/or
 - (vii) without notice to the Customer require the immediate payment by the Customer of all monies owing by the Customer to the Supplier under any Contract or on any account.
- (c) Termination of a Contract shall not affect rights and remedies accrued or accruing to a Party prior to the termination.

11 RIGHT OF ENTRY

The Customer grants to the Supplier the right to enter the Customer's premises or site where the Goods are located during Business Hours throughout the term of the Contract for the sole purpose of:

- (a) carrying out any assessment of, or undertaking a Product Warranty repair or replacement; or
- (b) recovery of Goods pursuant to Clauses 8(d) or 10(b); or
- (c) at the request of the Customer.

12 RISK

- (a) Risk in the Goods (including all risks associated with unloading) passes to the Customer upon delivery or upon title in the Goods passing to the Customer, whichever is the earlier.
- (b) For the purposes of Clause 12(a) delivery will be deemed to occur on the earlier of:
 - (i) the Customer taking possession of the Goods; or
 - (ii) completion of the loading of the Goods onto the relevant transportation vehicle provided by the Customer.
- (c) The Customer shall bear any duties and taxes that may be levied by reason of delivery of the Goods in the jurisdiction of the Customer.

13 CREDIT

- (a) The Supplier may grant the Customer credit upon the Terms and Conditions on the basis of the Application and such other documents and information as may be required by the Supplier.
- (b) If the Supplier grants the Customer credit by notice in writing, the Customer must pay the purchase price of the Goods in full (without any set off except as made by the Supplier) within the Period of Credit.
- (c) The granting of credit does not oblige the Supplier to extend any particular amount of credit to the Customer, unless specified as the Credit Limit.
- (d) The Customer acknowledges that the Supplier may at any stage during the continuance of the credit terms granted under this Clause 13, impose as a condition precedent to the grant of further credit, that the Customer give such security or additional security as the Supplier requires in its absolute discretion. The Supplier shall be entitled to withhold supply of Goods or further credit until such security or additional security is obtained.
- (e) The Customer and, if the Customer is a body corporate, for and on behalf of its directors, hereby authorises and unconditionally grants its consent to the Supplier obtaining from a credit reporting agency or other person or company, information and/or reports concerning the Customer from time to time during the continuance of any credit terms so as to assist the Supplier in deciding whether to grant credit or to continue to grant credit to the Customer.

14 FORCE MAJEURE

The Supplier is not liable for failure to perform the Contract to the extent and for so long as its performance is prevented or delayed because of:

- (a) circumstances outside the Supplier's control;
- (b) failure of the Supplier's machinery; or
- (c) failure of a supplier to the Supplier.

15 REPRESENTATIONS AND FITNESS FOR PURPOSE

- (a) Except as expressly provided to the contrary in the Contract, all representations, warranties, terms and conditions in relation to the Goods (whether implied or otherwise) are hereby excluded to the maximum extent permitted by law.
- (b) The Customer agrees that if it is aware (or should be aware) that the Goods, the subject of an Order, are for a particular purpose (including, but not limited to, use as a component part of another product) or are required to possess special or uniform characteristics, the Customer will clearly specify that purpose or those characteristics in any such Order.

16 DAMAGED GOODS UPON DELIVERY

- (a) The Customer must give written notice to the Supplier of any damage to received Goods within 48 hours of delivery of the same to the Customer.
- (b) Subject to the Law, the Supplier has no liability or obligation to repair or replace Goods if damage is reported after the 48 hour period.
- (c) The Supplier bears no liability for damage to Goods resulting from freight/ transport unless the delivery is organised by the Supplier with its approved freight/

transport provider and if the damage is reported within 48 hours as specified above.

- (d) All enquiries regarding damaged Good upon delivery may be directed to the Supplier on 1300 355 769 or at operations@totalce.com.au.

17 PRODUCT WARRANTY

- (a) This Clause 17 is subject to Clause 16 and the particular terms of any Product Warranty.
- (b) A Product Warranty may apply to Goods as required by law.
- (c) In order to make a potential claim under the Product Warranty, the Customer must notify the Supplier (or manufacturer) in writing of any defect in the Goods as soon as the Customer becomes aware of the alleged defect specifying in reasonable detail the nature of the defect. Such notice may be made by email to warranty@totalce.com.au.
- (d) Upon the Supplier verifying the validity and currency of the Product Warranty in respect of the Customer's claim, the Customer must upon request by the Supplier send the Goods to the Supplier.
- (e) The Customer must ensure that the Goods are properly packaged so as to ensure that no damage occurs to the Goods during transit. The Customer is responsible for all posting, shipping, freight and insurance charges in respect of the Goods returned to the Supplier. Whilst in transit, the Goods remains at the Customer's risk.
- (f) The Supplier may, in its absolute discretion reimburse the Customer for the Customer's cost to undertake such repairs to the Goods, provided that the Customer has first provided to the Supplier a written quote as to the estimated costs of the Customer undertaking such repair, and the Supplier has approved (in writing) the Customer to proceed with such repairs up to that agreed estimated cost.
- (g) Upon receiving the Customer's written quote, the Customer acknowledges that the Supplier shall have sole discretion as to whether the Supplier engages its own contractors to undertake the required repairs, or if the Customer may undertake such repairs.
- (h) The Customer agrees that the Supplier shall have no obligation or liability to reimburse the Customer for the costs of any repairs undertaken by the Customer that have not been agreed in writing with the Supplier beforehand.
- (i) The Supplier reserves the right at its sole discretion to determine whether to replace or repair, free of charge, any part or parts, or the entire Goods.
- (j) The Customer is responsible for all packaging, posting, shipping, freight and insurance charges in respect of any Goods returned by the Supplier to the Customer. The Customer agrees to pay such charges upon the same payment terms as apply to the Supplier's sales of Goods current at the time of the Product Warranty claim. Whilst in transit, the Goods remains at the Customer's risk.

18 GENERAL EXCLUSIONS AND LIMITATIONS OF THE WARRANTY

- (a) This Clause 18 applies only if a Product Warranty exists for a Good. Otherwise it has no application.

- (b) The Product Warranty is limited to replacement or repair of defective parts or defects in workmanship and may (or may not) include any labour costs (whether such labour costs are supplied by the Supplier or the Customer).
- (c) In the event that no identical parts are available to repair the defective Goods, the Supplier has the right to replace the Goods with similar Goods of equal age and condition as the defective Goods, or offer the Customer the choice to upgrade the defective Goods. These may incur additional costs to the Customer and the Customer in those circumstances agrees to pay those additional costs upon the same payment terms as apply to the Supplier's sales of Goods current at the time of the Product Warranty claim.
- (d) Replacement Goods or parts may include remanufactured or refurbished parts or components. Repaired or replaced Goods will continue be warranted for the remainder of the Product Warranty from the Warranty Commencement Date.
- (e) The Product Warranty does not cover consumables, including but not limited to batteries and surge protectors.
- (f) The Warranty will not apply, and the Supplier will be under no obligation or liability whatsoever if, in the opinion of the Supplier, the Goods have been:
 - (i) installed and maintained other than in compliance with the Supplier's product specifications, instructions and directions;
 - (ii) installed or used other than in a manner approved by the Supplier as suitable for the Goods;
 - (iii) handled in a manner which contravenes any direction, instruction or warning issued by the Supplier from time to time;
 - (iv) misused, abused, altered or damaged in any way;
 - (v) tampered with, including if any factory applied serial number has been altered or removed from the Goods;
 - (vi) damaged through normal wear and tear including exposure to the elements (on both exposed and unexposed surfaces), exposure to abnormally corrosive conditions, rust, or entry by any insect, vermin or foreign object in the Goods; or
 - (vii) damaged as a result of connection to irregular voltage sources, voltage supply problems, power surges and dips, thunderstorm activity, result of a natural disaster, or acts of God (including fire, flood, lightning).

(A) the Supplier is in breach of a guarantee in the Australian Consumer Law (other than a guarantee in section 51, 52 or 53 of Schedule 2 of the Australian Consumer Law) in connection with the supply of goods (other than goods of a kind ordinarily acquired for personal, domestic or household use or consumption), the Supplier may (in its absolute discretion):

- (1) replace those goods;
- (2) supply equivalent goods;
- (3) repair those goods;
- (4) pay the cost of replacing those goods;
- (5) pay the cost of acquiring equivalent goods; or
- (6) pay the cost of having those goods repaired,

and the Supplier's liability is limited to that extent;

(B) the Supplier is in breach of a the guarantee in the Australian Consumer Law in connection with the supply of services (other than services of a kind ordinarily acquired for personal, domestic or household use or consumption) the Supplier may (in its absolute discretion):

- (1) supply those services again; or
- (2) pay the cost of having those services supplied again,

and the Supplier's liability is limited to that extent.

(ii) if the Supplier is in breach of a Contract (other than a breach referred to in Clause 19(a)(i)), the Supplier's liability is strictly limited to:

(A) for goods, products or materials - the cost of replacement of the defective Goods as soon as reasonably practicable, or the supply of equivalent Goods, or the repair of the defective Goods or the repayment (or allowance) of the invoice price of the defective Goods at the option of the Supplier;

19 LIMITATION OF LIABILITY

- (a) Subject to Clause 15(a), the Supplier's liability to the Customer (and any party claiming through the Customer against the Supplier) for any claim for loss or damages (including legal expenses) made in connection with the Contract for contract, tort (including negligence), under statute, in equity or otherwise shall be as follows:
 - (i) if the Customer is a consumer (as defined in the Australian Consumer Law) and:

- (B) for services - to the provision of the services again or payment of the cost of having the relevant services provided again at the option of the Supplier;
- (iii) the Supplier's liability for breach of a Contract does not extend beyond the defective Goods to any other Goods that are part of an Order or otherwise;
- (iv) where loss or damage is not covered by Clauses 19(a)(i) or 19(a)(ii), the Supplier is not liable to the Customer under statute, in equity or in tort (including negligence or otherwise) for any loss or damage to person or property arising from or caused in any way by the Goods (except to the extent that the Supplier's conduct is deliberate, is illegal, is fraudulent or constitutes a criminal offence);
- (v) subject to Clauses 19(a)(i) and 19(a)(ii), the Supplier shall not be liable for any indirect, special or consequential loss resulting from or caused in any way by the Supplier, its officers, employees or agents arising out of or in connection with the supply of the Goods;
- (vi) **indirect, special or consequential loss or damage** includes:
 - (A) any loss of income, profit or business;
 - (B) any loss of goodwill or reputation;
 - (C) any loss of value of intellectual property.
- (b) Any claim under Clause 19(a)(ii) by the Customer in respect of defective Goods and/or damaged Goods must be made in writing within 14 days of the delivery of the Goods.
- (c) The Supplier shall not be responsible for any non delivery of the Goods or failure to supply the Goods on the date agreed between the Supplier and the Customer, and the Customer shall not be entitled to cancel any Order as a result of that non delivery or failure to supply.
- (d) The provisions of the United Nations Convention on Contracts for the International Sale of Goods are expressly excluded from all Contracts.

20 INDEMNITY

The Customer indemnifies the Supplier against any action, claim, proceeding, demand, damages, loss, liability, cost or expense (including Collection Costs and other costs on a solicitor/ client basis) which the Supplier may suffer or incur arising out of or connected with the Terms and Conditions, any Contract or the Goods.

21 MEASURES

- (a) Any and all statements made by the Supplier as to weight, length, quantity or other characteristics of Goods are approximate and the Supplier may supply Goods on an actual or calculated basis.
- (b) A calculated basis will be in accordance with the applicable Australian standards.

- (c) the Supplier's statements as to weight, length, quantity or other characteristics are final and the Supplier is not liable for any errors in such statements unless the Customer gives the Supplier:
 - (i) written notice of any error within 14 days of delivery;
 - (ii) a reasonable opportunity to examine and re-test the Goods before they are used or dealt with.

22 SHORTAGES

- (a) The Customer must inspect the Goods on or immediately after delivery. In the event that the Customer discovers that all or any portion of the Goods as delivered differs, in quantity or kind, from the description in the invoice (other than due to an act or omission of the Customer), the Customer must notify in writing, and make an immediate claim, against the Supplier. No claim by the Customer for shortages of Goods may be made unless such claim is notified to the Supplier within 48 hours of delivery by telephone on 1300 355 769 or by email at operations@totalce.com.au.
- (b) In the event that the Customer does not make a claim in accordance with this Clause, the Goods shall be deemed to be in conformity with the Contract and the Customer shall be deemed to have accepted them. The Customer will be deemed to have absolutely and unconditionally waived such claim.
- (c) The Supplier will endeavour to rectify any shortages as soon as practicable after receiving notice but will not suffer any liability from or in respect of such rectification.

23 DEFAULT INTEREST

Any amounts due to the Supplier and unpaid or any other payments made by the Supplier in default of payment by the Customer under a Contract shall be regarded as cash advances made on the due date or the date of payment by the Supplier respectively, repayable on demand and shall, until repayment to the Supplier, bear interest calculated on the daily balances of such advances at a rate equal to 12% per annum calculated daily and paid on written demand or as instructed by the Supplier.

24 DISPUTE RESOLUTION

- (a) All disputes or differences which shall at any time hereafter arise between two or more of the Parties (the **Disputants**) in respect of the construction or effect of this Contract or the rights, duties and liabilities of the Disputants hereunder or any matter or event connected with or arising out of this Contract shall be initially referred on notice to each other Party.
- (b) Each Disputant may give notice to the other that the provisions of this Clause 24 are to apply to any dispute arising between the Disputants as to any matter arising out of or in connection with this Contract.
- (c) The notice referred to in Clause 24(b) shall include a summary of the issues in dispute and notification of a time within a period of 10 Business Days beginning 4 Business Days after the service of the notice, and a place in the capital city of the State at which the representatives of the Disputants (which may include a Disputant) are to meet to try to resolve the dispute.
- (d) The representatives of the Disputants shall meet at the time and place specified in the notice to try to resolve the dispute and shall, if necessary, continue to negotiate for 2 consecutive Business Days unless they otherwise agree to reconvene.

- (e) If the dispute has not been resolved by the representatives of the Disputants by the end of the meeting then either Party may within 10 Business Days thereafter apply to the Law Society of the State to appoint a neutral adviser to assist in a further attempt by the Parties in good faith to resolve the dispute by structured negotiations. Such person shall act as an expert not as an arbitrator and will be entitled to appoint such technical expert or experts as he considers necessary to assist him in seeking to resolve the matter referred to him.
- (f) If the Parties fail to appoint a neutral adviser within the 10 Business Days period referred to in Clause 24(e) above or the Parties fail to reach agreement in the structured negotiations within 20 Business Days of the neutral adviser being appointed, then any dispute may be referred to a court of competent jurisdiction. Neither Party shall be deemed to be precluded from taking such interim formal steps as may be considered necessary to protect such party's position while the mediation or other procedure is pending or continuing.
- (g) Each party to a Dispute must pay its own costs of complying with this Clause 24. The costs of the neutral adviser shall be borne equally by the Parties in dispute.
- (h) Any information or documents disclosed by a Party under this Clause 24:
 - (i) must be kept confidential; and
 - (ii) may only be used to attempt to resolve the dispute.
- (i) Clauses 24(g) and 24(h) survive termination of the dispute resolution process.

25 NO PARTNERSHIP, AGENCY OR TRUSTEESHIP

Nothing in this Contract or in the execution or performance of its terms shall constitute any Party the partner or agent of any other Party and no trusteeship shall be implied as between any of the Parties.

26 WAIVER

The Supplier waives a right under a Contract only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.

27 SEVERANCE

If a provision of a Contract would, but for this Clause, be unenforceable:

- (a) the provision must be read down to the extent necessary to avoid that result;
- (b) if the provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of the Contract.

28 VARIATION

The Supplier may vary the Terms and Conditions without notice to the Customer by agreement with the Customer.

29 SURVIVAL

Clauses 6, 7, 8, 9, 10, 11, 13, 15, 18, 19, 20, 23, 24, 29, 30, 31, 33, 34, 35, 37 and 38 survive the termination or expiry of the Contract.

30 SET OFF

The Supplier may at any time apply and set off any money that the Customer may owe the Supplier towards the satisfaction of any sum of money that the Supplier owes the Customer. The Customer may not set off any amounts.

31 COSTS

The Customer must pay to the Supplier, and indemnify the Supplier for, all costs and expenses incurred by the Supplier in connection with the Contract including legal expenses (on a solicitor-client basis), stamp duty and Collection Costs incurred in the recovery of monies owing by the Customer to the Supplier or in otherwise enforcing the Supplier's rights against the Customer under the Contract.

32 ASSIGNMENT

- (a) The Supplier may assign to any person this document and any Contract.
- (b) The Customer shall not assign, transfer, encumber or declare trusts in respect of this document or any Contract (or permit a change in control of the Customer) without the prior consent of the Supplier.

33 APPLICABLE LAW

This document is governed by the law of the State and the courts of that State have non-exclusive jurisdiction in connection with this document.

34 PRIVACY STATEMENT AND CONSENT

The Supplier collects the Customer's information in order to determine whether to supply Goods to the Customer and in, ordering Goods from the Supplier, the Customer agrees that the Supplier may:

- (a) use the personal information about the Customer which the Customer or others have provided at any time to the Supplier in order to manage the Supplier's relationship with the Customer and, where required, to comply with legislative and regulatory requirements; and
- (b) disclose that information to the Supplier's related bodies corporate, regulatory and law enforcement bodies, debt collection agencies, any organisation proposing to fund the acquisition of, or acquire, any interest in any obligation the Customer may owe the Supplier, and to any person to the extent necessary, in the Supplier's view, to carry out any instruction the Customer give to the Supplier or to enforce any rights of the Supplier against the Customer.

The Customer acknowledges that, subject to the provisions of the *Privacy Act 1988* (Cth), the Customer may access the information which the Supplier holds about the Customer at any time by writing to the Supplier.

35 NOTICES

Any notice to be given by one party to the other must be signed by the party giving the notice or by one of its officers or its duly authorized lawyer or agent and must be hand delivered or sent by prepaid post or sent by facsimile or electronic mail to the address, facsimile number or electronic mail address (as the case may be) previously provided (or any other address, facsimile number or electronic mail address that a party may notify to the other) and will be deemed sufficiently given:

- (a) in the case of hand delivery, on the date of delivery; or

- (b) in the case of prepaid post, 2 Business Days after being sent by prepaid post; or
- (a) in the case of facsimile, on receipt by the sender of a successful transmission answerback; or
- (b) in the case of electronic mail, on day of transmission provided that the sender can give evidence of transmission.

36 UNFAIR CONTRACT TERMS

To the extent that these Terms and Conditions are a consumer contract (within the meaning of the *Australian Consumer Law*) and a standard form contract (within the meaning of the *Australian Consumer Law*), any term of these Terms and Conditions which would be void because the term is unfair:

- (a) must be read down to the extent necessary to avoid that result; and
- (b) if the provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of the Contract.

37 DEFINITIONS

In this document (**Terms and Conditions**):

- (a) **Application** means the application (if any) by the Customer to the Supplier for commercial credit;
- (b) **Australian Consumer Law** means the Australian Consumer Law applying to the State and includes the *Competition and Consumer Act 2010* (Cth);
- (c) **Business Day** means a day other than a Saturday, Sunday or public holiday in the State;
- (d) **Collection Costs** means all costs incurred in the recovery of monies owing by the Customer to the Supplier or in otherwise enforcing the Supplier's rights against the Customer under the Contract (including legal and debt collection costs on a full indemnity basis) and includes default interest hereunder;
- (e) **Contract** means the contract formed between the Supplier and the Customer by an Order accepted by an Order Acknowledgment;
- (f) **Customer** means the person placing the Order with the Supplier;
- (g) **Credit Limit** means the amount approved in writing by the Supplier;
- (h) **Deposit** is defined in Clause 6(a);
- (i) **Due Date for Payment** means the date specified for payment in Clause 7(d) as applicable to the Customer;
- (j) **Excluded Charges** means customs duty, sales tax, freight, insurance or any other taxes, fees, costs or charges levied or incurred because of exportation of the Goods, installation and maintenance costs and any other costs connected with or resulting from these Terms and Conditions or the Supplier's performance of its obligations hereunder (even if the Supplier is to pay freight carriage and/or insurance);
- (k) **Goods** means the supply of goods and services by the Supplier;
- (l) **Intellectual Property** means all industrial and intellectual property rights and confidential

information owned by the Supplier from time to time including but without limiting the generality of the foregoing, rights to, or arising from, patents, designs, trade marks, copyrights, designs, rights to or arising from circuit or semi conductor designs, computer programmes, trade secrets, confidential information, valuable technology, inventions and the right to apply for the grant of any form of industrial or intellectual property rights;

- (m) **Order** is defined in Clause 3(a);
- (n) **Order Acknowledgment** is defined in Clause 3(c);
- (o) **Party** means the Supplier or the Customer as the context requires;
- (p) **Period of Credit** means the period before the Due Date for Payment;
- (q) **Product Warranty** means the warranty for the Goods referred to in Clauses 17 and 18.
- (r) **PPSA** means *Personal Property Securities Act 2009* (Cth);
- (s) **Scope of Work** means the scope of work (if any) as advised by the Supplier to the Customer;
- (t) **State** means South Australia and the Commonwealth of Australia as the context requires;
- (u) **Supplier** means *Total Commercial Equipment Pty Ltd ABN 51 645 337 104*;
- (v) **Territory** means the territory and territories in which the Customer carries on business;
- (w) **Transaction Tax** includes any goods and services tax, value added tax and sales tax as well as any identified or new transaction taxes that come into existence after the effective date of these Terms and Conditions.

38 INTERPRETATION

In this agreement, except where the context otherwise requires:

- (a) if there is an inconsistency between the documentation provided by the Supplier in relation to the Goods, these Terms and Conditions and any other relevant documents, these Terms and Conditions will prevail, then the documentation provided by the Supplier in relation to the Goods, and then any other relevant documentation provided by the Supplier in relation to the Goods;
- (b) the singular includes the plural and vice versa, and a gender includes other genders;
- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this agreement, and a reference to this agreement includes any schedule or annexure;
- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (f) a reference to time is to Adelaide, Australia time;
- (g) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the

- party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
 - (i) a word or expression defined in the *Corporations Act 2001* (Cth) has the meaning given to it in the *Corporations Act 2001* (Cth);
- (j) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it; and
 - (k) headings are for ease of reference only and do not affect interpretation.