

## CONDITIONS OF SALE

The Buyer's attention is drawn in particular to the provisions of clauses 11 (Seller's Warranty) and 14 (Limitation of Liability).

**1. INTERPRETATION**

- 1.1 In these Conditions, the following terms shall have the following meanings: *Australian Consumer Law* means the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) as amended or replaced from time to time; *Affiliate* means in respect of the Seller, any entity which controls, is controlled by or is under common control with the Seller, and control means the ability, directly or indirectly, to direct the affairs of another by means of ownership, contract or otherwise; *Buyer* means the person(s) so described in the Order; *Confidential Information* means the disclosing party's information in any form whether oral, documentary, magnetic, electronic, graphic or digitised; relating to the disclosing party's business and including information relating to patents, trademarks, registered/ unregistered rights, design rights, copyright formulations, engineering drawings, specifications, data, know-how, inventions, models, sample components, formulae, manufacturing methods, analytical and quality control methods, sales data, anticipated sales volumes, information relating to potential or actual customers, business structure, assets, liabilities, operations, budgets and strategies, and including the price schedules, quotations, and terms of each Order; *Contract* means the contract for the sale and purchase of the Goods whether expressly in writing or through delivery of the Goods pursuant to an Order, and incorporating these Conditions; *Goods* means any goods agreed in the Contract to be bought by the Buyer from the Seller as described in the Order; *GST Act* means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); *Non-excludable Obligation* means any implied condition or warranty, provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law or any other statute, the exclusion, restriction or modification of which would (i) contravene that statute; or (ii) cause any term of these Conditions to be void; *Order* means the Buyer's purchase order to which these Conditions are annexed or to which these Conditions are applicable; *Seller* means Robertshaw Australia Pty Limited ACN 000 163 646, whose registered office is at 3B Lenton Place, North Rocks, NSW, 2145.
- 1.2 For the avoidance of doubt, all clauses in these Conditions are subject to, and do not operate to exclude, restrict or modify, any Non-excludable Obligation.

**2. GENERAL**

- 2.1 Any quotation or tender made by the Seller and/or any Contract shall be governed only by these Conditions to the entire exclusion of all other terms or conditions unless otherwise agreed in writing by the Seller. An Order for Goods from the Buyer constitutes an offer from the Buyer to purchase the Goods subject to these Conditions.
- 2.2 Unless otherwise stated in writing quotations and tenders shall be considered as invitation to treat and shall in any case lapse after 30 days from their date. Orders based on quotations or tenders shall not be binding on the Seller until the Seller accepts such Orders and notifies the Buyer in writing of such acceptance. Acceptance of all terms and conditions of the Order shall take place when either of the following occurs: (i) a written acknowledgement is issued by the Seller; or (ii) the Goods ordered under relevant Order are delivered to the Buyer.
- 2.3 Times quoted for despatch, delivery or completion shall run from the date of such acceptance of the Order.
- 2.4 Delivery terms such as Ex-works, FCA, FOB, CIF, used in the quotation, tender or Contract shall be interpreted in accordance with INCOTERMS 2010 Edition as amended or superseded from time to time.
- 2.5 The Seller may, at its discretion, impose an appropriate surcharge to cover handling costs, in respect of Orders placed which are below a minimum consignment value; Likewise the Seller shall have the right to impose a surcharge for expedited delivery (defined as a delivery requirement at variance with the Seller's normal carriage arrangements) to reflect the additional logistic and transport costs incurred in meeting the Buyer's requirements. The sum of such costs may be varied at the Seller's fair and reasonable discretion from time to time.
- 2.6 In the event that the Seller, for any reason, accepts the cancellation of all or part of an Order, the Buyer shall be liable for payment in full of all costs incurred by the Seller up to the point of cancellation or, if the manufacture of the Goods has been completed, for the full price of the Goods.

**3. VARIATIONS**

- 3.1 Any variation to these Conditions shall have no effect unless expressly agreed in writing by the Seller.
- 3.2 Either Party may request variations that affect the scope, duration or price of the Contract, including variations in the specifications and Goods to be delivered. If either Party requests any such change, the Parties shall negotiate in good faith a reasonable and equitable adjustment to the Contract, including if necessary, any adjustment to the prices and performance schedule. Neither Party shall be bound by any variation requested by the other until an amendment to the Contract has been accepted in writing by both Parties.
- 3.3 The Seller shall not be obliged to accept any variation of a Contract where the net effect, together with variations already made, is to increase or reduce the price by more than 15 percent.

**4. SPECIFICATION**

- 4.1 The Buyer is responsible for satisfying itself as to the suitability of the Goods for the Buyer's application. The Seller shall not be bound by any statement concerning the scope of supply, performance or characteristics of the Goods unless expressly incorporated in the Contract, although nothing in these Conditions shall be construed as attempting to limit either Party's liability for fraud or fraudulent misrepresentation.
- 4.2 Descriptions and illustrations contained in the Seller's catalogues, price lists and other advertisement material are intended merely to present a general description of the Goods described therein and none of these shall form part of the Contract.
- 4.3 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable legislation and which do not materially affect the quality of the Goods.

**5. PRICE**

- 5.1 Unless otherwise agreed by the Seller in writing the price of the Goods will be the price set out in the Seller's price list published or agreed in writing with the Buyer at the time of the Order.

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- 5.2 Except as expressly agreed in writing to the contrary, the quoted price shall be exclusive of GST (as defined in the GST Act) or any value added tax or similar sales tax, any import tax or other tax payable in the country of the Buyer, and all costs or charges in relation to loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition to the quoted price when it is due to pay for the Goods supplied.
- 5.3 If any law or regulation comes into force after the date of the Seller's quotation or tender which increases the cost of performing the Contract, the Contract price shall be adjusted accordingly.
- 5.4 In the event of an increase in the cost to the Seller of materials required to fulfil the Order of more than 5% from the date of Order placement, the Seller reserves the right at any time up to 30 days after the date of the Order to increase the price of the Order by a percentage equivalent to the percentage rise in the cost of materials. The Seller shall notify the Buyer in writing of such a price increase. The Buyer will be entitled to cancel the Order by written notice to the Seller within 30 working days of the date of the Seller's notice of price increase. In the absence of such notice, the price increase will be binding on the Buyer.
- 6. PAYMENT**
- 6.1 All payments shall be made in cleared funds in the currency indicated in the Order confirmation to the designated account of the Seller. Payments shall be paid by telegraphic transfer, the costs of which shall be borne by the Buyer, into the designated account of the Seller. All sums due to the Seller shall be payable within 30 days of the date of the Seller's tax invoice (as defined in the GST Act) and time for payment shall be of the essence. No deduction whether by way of set-off, counterclaim or otherwise, shall be made by the Buyer except for claims of the Buyer which are not disputed by the Seller or which have been finally confirmed by a court of law.
- 6.2 If any amount due and payable to the Seller under the Contract is overdue for reasons for which the Seller is not responsible, the Seller may, without prejudice to any other right it may have and at its own option, either suspend deliveries or terminate the Contract and in addition charge the Buyer simple interest on amounts overdue at an annual rate equal to six month LIBOR plus 4% above the prime lending rate from time to time in force during the period that any such amount is overdue (before and after judgement).
- 6.3 Where payment is to be secured by a letter of credit, then except as otherwise agreed by the parties in writing, such letter of credit shall: (i) be an irrevocable letter of credit; (ii) provide for partial deliveries; (iii) be advised through and confirmed by a bank acceptable to the Seller within 30 days of formation of the Contract; (iv) conform to the latest edition of the International Chamber of Commerce's Uniform Custom and Practice for Documentary Credits (UCP 500); and (v) be valid for at least sixty days beyond the latest despatch or delivery date stated in the Contract. The Buyer shall, at its own expense extend the letter of credit in accordance with any variation or other event which entitles the Seller to any extension of time for despatch or delivery.
- 6.4 All bank charges arising outside of Australia (including but not limited to the cost arising in establishing or extending any letter of credit) and charges relating to bank confirmation of the letter of credit shall be paid by the Buyer. All other bank charges arising within Australia shall be paid by the Seller with the exception of those arising within the Buyer's bank which shall be paid by the Buyer.
- 7. BUYER'S GENERAL OBLIGATIONS**
- 7.1 The Buyer shall provide on time any approval, instruction, material, facilities, equipment or other thing which may be required in relation to the performance of the Seller's obligations and which is not expressly stated to be the Seller's responsibility.
- 7.2 Any authorisation, licence, permit, planning permission or approval required from any regulatory authority for which the Seller is not expressly made responsible in the Contract shall be obtained in due time by the Buyer.
- 7.3 The Buyer shall be responsible for obtaining any necessary customs import clearance and shall give all reasonable assistance to the Seller in obtaining any work letter of invitation, permit, visa and similar document which the Seller or any of its employees or agents may require at no cost to the Seller.
- 7.4 The Buyer shall without undue delay respond to any and all requests or submissions of documents, drawings or information for comment or approval.
- 8. DELIVERY**
- 8.1 Unless otherwise agreed in writing by the Seller, if no destination is specified in the Contract, delivery shall be made Ex-works at the Seller's place of business. The Seller may deliver the Goods in a number of batches.
- 8.2 Unless expressly agreed to the contrary in writing, dates cited for delivery shall be approximate only, and time for delivery shall not be of the essence. If no delivery dates are specified, delivery shall be made within a reasonable time.
- 8.3 If the Seller delivers a quantity of Goods of up to 5% more or less than the quantity ordered the Buyer will not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and will pay for such Goods at the pro rata Contract rate. The Buyer will notify the Seller of the surplus or shortfall of the Goods within 5 days of receipt.
- 9. STORAGE**
- 9.1 If the Buyer does not take delivery of the Goods within 7 days of notification from the Seller that they are ready for delivery, or the Seller is unable to deliver the Goods because the Buyer has failed to comply with its general obligations under clause 7, the Seller shall be entitled on behalf of the Buyer to put the Goods into storage at the Buyer's expense, and risk in the Goods shall pass to the Buyer. Delivery to storage shall constitute delivery to the Buyer and the Seller shall become entitled to payment upon such delivery.
- 10. TRANSFER OF TITLE AND RISK**
- 10.1 Legal title to and beneficial ownership in any consignment of the Goods (excluding software) shall pass to the Buyer upon receipt by the Seller of all sums due from the Buyer in respect of the Goods. All risks of loss or damage to the Goods shall nevertheless pass to the Buyer on delivery and the Buyer shall maintain the Goods in satisfactory condition and keep them adequately insured on the Seller's behalf for their full price and on request provide evidence of such insurance.

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- 10.2 Until the passing of title in the Goods to the Buyer, the Buyer shall hold the Goods as bailee for the Seller and clearly identify them as belonging to the Seller. The Buyer shall not dispose of, encumber, mortgage, pledge and assign by way of security or otherwise charge the Goods until it has paid the Seller for these Goods in full. If the Buyer is in default of payment or otherwise violates the Contract, and provided that the Seller has executed his right of rescission of a Contract, the Seller may at any time until the passing of title in the Goods to the Buyer require the return of the Goods delivered under such Contract. If this requirement is not complied within a period of 8 days the Seller may (without prejudice to its other rights and remedies) repossess the Goods.
- 10.3 The Buyer shall maintain accurate records to ensure the continued traceability of any of the Goods purchased from the Seller under these Conditions and shall provide reasonable assistance to the Seller in the event that any of the Goods it has purchased are affected by a product recall or corrective action procedure implemented by the Seller.
- 10.4 The Buyer agrees to do anything that the Seller requests (such as obtaining consents, providing information and signing and producing documents) in order to perfect, preserve, maintain, protect, or otherwise give full effect, under the *Personal Property Securities Act 2009* (Cth) (**PPSA**) and related regulations, to this document and the security interests (as defined in the PPSA) (if any) created by this document, including registering one or more financing statements in relation to the security interests (as defined in the PPSA) created by this document on any register established pursuant to the PPSA.

For the avoidance of doubt, the Buyer if based in New Zealand agrees to do anything that the Seller requests (such as obtaining consents, providing information and signing and producing documents) in order to perfect, preserve, maintain, protect, or otherwise give full effect, under the New Zealand Personal Property Securities Act 1999 (PPSA) and related regulations, to this document and the security interests (as defined in the PPSA) (if any) created by this document, including registering one or more financing statements in relation to the security interests (as defined in the PPSA) created by this document on any register established pursuant to the PPSA.

**11. SELLER'S EXPRESS WARRANTY**

- 11.1 For the avoidance of doubt, the warranties set out in this clause 11 apply in addition to, and do not operate to exclude, restrict or modify the application of, any Non-excludable Obligation of the Seller.
- 11.2 The Seller warrants that the Goods supplied shall, under proper use, be free from defects in design, material and workmanship and conform to the specification specified in the Contract for a period of 18 months from the date of manufacture, or for a period advised by the Seller in writing otherwise ("Warranty Period"). "Proper use" means storage, installation, commissioning operation and maintenance in accordance with the Seller's specifications and good industry practice.
- 11.3 The Seller's obligation under this warranty shall be limited to making good by repair or replacement at the Seller's option any defect in the Goods which appears before the expiration of the Warranty Period or, at the Seller's option, reimbursing the price received by the Seller for the Goods. Where the Seller opts to repair or replace the Goods the Buyer shall return the Goods to be repaired or replaced to the Seller's premises at its own cost. In respect of items which have been repaired or replaced by the Seller hereunder, the Seller shall guarantee such items up to the end of the original warranty period. Replaced items shall become the property of the Seller. The Seller's obligation is subject to: (i) the Seller being given notice by the Buyer of the defect within 7 days of the date of delivery, or when the defect was not apparent on reasonable inspection, within a reasonable time after the discovery of the defect; (ii) the Seller being given a reasonable opportunity after receiving notice of the defect to examine the Goods; and (iii) where the Goods are returned by the Buyer to the Seller, compliance with the provisions of clause 11.8. The Seller shall have no liability for the costs of dismantling, transportation, re-assembly, and re-testing of any of the Goods affected under this warranty.
- 11.4 The Seller's obligation shall not extend to failure caused by wear and tear, misuse, neglect, or repairs or modifications to the Goods which have been made without the Seller's approval, or result from; designs and specifications provided by the Buyer, instructions given by the Buyer, software and firmware programs developed by the Buyer and used in or with the Goods and more generally by defects for which the Buyer is to blame or which are caused by activities performed by the Buyer without the Seller's written consent.
- 11.5 EXCEPT IN RELATION TO ANY NON-EXCLUDABLE OBLIGATION OF THE SELLER, THIS WARRANTY IS IN PLACE OF AND EXCLUDES TO THE FULLEST EXTENT PERMITTED BY LAW, ALL OTHER RIGHTS, REMEDIES, WARRANTIES AND CONDITIONS, WHETHER ORAL, WRITTEN, STATUTORY, EXPRESS OR IMPLIED. THE SELLER'S LIABILITIES AND THE BUYER'S REMEDIES IN RESPECT OF DEFECTS IN THE GOODS AND ANY DAMAGE TO THE GOODS RESULTING THEREFROM WHETHER ARISING FROM BREACH OF CONTRACT, STATUTORY DUTY, WARRANTY, NEGLIGENCE OR OTHERWISE ARE SOLELY AND EXCLUSIVELY AS STATED IN THIS SELLER'S WARRANTY CLAUSE, AND THE SELLER SHALL HAVE NO LIABILITY OF ANY KIND FOR ANY SUCH DEFECTS OR DAMAGES WHICH APPEAR AFTER THE EXPIRY OF THE WARRANTY PERIOD DESCRIBED ABOVE.
- 11.6 If the Seller did not manufacture the Goods (or parts or components thereof) which are subject to a warranty claim under this clause 11, then the Buyer is only entitled to such warranties that the Seller receives from the actual manufacturer in respect of such Goods.
- 11.7 Goods not the subject of a claim under either (i) a warranty under this clause 11; or (ii) a Non-excludable Obligation of the Seller, may only be returned by the Buyer with the prior written consent of the Seller.
- 11.8 Prior to returning any of the Goods for repair or replacement under the warranty set out in this clause 11, the Buyer shall inform the Seller's 'Quality' department of its intention to do so by fax (+ 61 (0) 2 9896 3595) listing in the notice the following data: (i) manufacturing part number(s) and serial numbers present in the product label; (ii) the manufacturing date (still present in the product label); (iii) quantity for each part number; and (iv) reason for return for each Good. Only when the Seller's Quality department has authorised the return and given a reference number (which must be printed on all correspondence) are the Goods to be returned. If the Goods are out of warranty, and the Goods are not the subject of a Non-excludable Obligation, an estimate in respect of the cost of repairs will be supplied. The returned Goods will need to be accompanied by: (i) a "Pro-forma" invoice indicating the value of the Goods for custom requirements if the Buyer is not located in Australia or a despatch note if the Buyer is located in Australia; and (ii) a statement declaring that the Goods are being returned for examination/repair.

**12. INTELLECTUAL PROPERTY RIGHTS AND LICENCE TO USE EMBEDDED SOFTWARE**

- 12.1 No title to any of the Seller's industrial or intellectual property or to industrial or intellectual property in the Goods supplied is transferred to the Buyer under these Conditions or the Contract (where intellectual property includes but is not limited to patents, design rights, copyrights, trademarks, database rights, know how and proprietary information). No designs, drawings or goods supplied by the Seller shall be reproduced, disclosed, copied or reverse engineered without the Seller's prior written permission.

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- 12.2 The Buyer will not without the prior written consent of the Seller remove, cover, obscure or in any way alter any distinctive mark forming part of or impressed on or affixed to the Goods received by the Buyer from the Seller and any of the Goods which will have been so covered, obscured or altered without such consent will not be sold.
- 12.3 Any software or firmware incorporated into the Goods is supplied under licence for the use of the software only, and all other exploitation rights are retained by the Seller. The Seller grants to the Buyer a licence to use such software or firmware only in connection with those Goods and only to the extent required to use the Goods for their normal intended commercial purpose. The licence shall include a right to grant sub licences only to the extent required lawfully to sell the Goods. The Buyer will not export or re-export software without the appropriate licences, or make any copies of Software or parts thereof, except for archival back up purposes. The Buyer must not reverse engineer, decompile, disassemble, adapt, arrange or error-correct or make any other alterations to the software or rent or lease the software separately from the Goods to any third parties.
- 12.4 The duration of this licence shall be the life of the Goods into which the software or firmware is incorporated.

**13. INTELLECTUAL PROPERTY RIGHT INFRINGEMENT**

- 13.1 The Seller shall indemnify the Buyer against all damages and costs awarded against the Buyer for infringement of any intellectual property right of third party resulting from the use or the sale of the Goods but this indemnity shall not apply to any infringement which is due to (i) the association or combination of the Goods with any article, apparatus or device; or (ii) any goods or parts thereof made to designs supplied by the Buyer; or (iii) use of the Goods in a manner, or for a purpose, which was not foreseeable by the Seller; or (iv) modification of the Goods by the Buyer or by any third party. This indemnity is conditional on the Buyer: (i) giving the Seller the earliest possible written notice of any claim being made against the Buyer or actions threatened to be brought against the Buyer or the Seller; (ii) giving the Seller (at the Seller's expense) full authority and sole control to conduct on the Buyer's behalf any litigation or negotiations in respect thereof; (iii) having not made any admission with respect to the infringement of third party intellectual property right which might be prejudicial to the defense of such claim or action; and (iv) the Buyer at the request and reasonable expense of the Seller taking all action as may be reasonably required to assist the Seller in relation to any infringement or claim. Subject to the provisions of clause 14, the foregoing states the Seller's entire liability for intellectual property right infringement.

**14. EXCLUSION AND LIMITATION OF LIABILITY**

- 14.1 Except in relation to death, bodily injury or any Non-excludable Obligation, all conditions, warranties, guarantees, rights, remedies, liabilities or other terms that may be implied by custom, under the general law or by statute are expressly excluded under these Conditions.
- 14.2 Except in relation to Non-excludable Obligations, the Seller's liability to Buyer or a third party arising directly or indirectly under or in connection with any Contract or the performance or non-performance of any Contract by Seller or an employee, servant or agent of the Seller and whether arising under any indemnity, statute, in tort (for negligence or otherwise), or on any other basis in law or equity is limited as follows:
- (a) the Seller will have no liability whatsoever to Buyer or a third party for any loss, harm, damage, cost or expense (including legal fees), or in the nature of special, indirect or consequential loss or damage (including, without limitation, economic loss, loss of contract, loss of profit or revenue, loss of anticipated savings, loss of opportunity, loss of production, loss of use, increase in operating costs, any product recall or corrective action costs, production stoppage or loss of data); and
  - (b) Notwithstanding anything else in these Conditions or otherwise, the total aggregate liability of the Seller to the Buyer for all claims of any kind for any loss or damage resulting from its performance or lack of performance under any Contract will not in any event exceed an amount equal to 50% of the value of the Goods delivered to Buyer under that Contract in the relevant calendar year.
- 14.3 In relation to Non-excludable Obligations (other than a guarantee as to title, encumbrances or quiet possession conferred by the Australian Consumer Law), except for Goods or Services of a kind ordinarily acquired for personal, domestic or household use or consumption (in respect of which the Seller's liability is not limited under these Conditions), the Seller's liability to the Buyer for a failure to comply with any Non-excludable Obligation is limited to:
- (a) in the case of Services, the cost of supplying the Services again or payment of the cost of having the Services supplied again; and
  - (b) in the case of Goods, the cost of replacing the Goods, supplying equivalent Goods or having the Goods repaired, or payment of the cost of replacing the Goods, supplying equivalent Goods or having the Goods repaired.
- 14.4 For the avoidance of doubt, the provisions of this clause 14 survive the termination of a Contract.

**15. CONFIDENTIALITY**

- 15.1 The receiving party will not divulge or communicate to any person without prior written consent of the disclosing party any Confidential Information and shall not use the Confidential Information for any purpose other than as contemplated under the Contract.
- 15.2 The obligation of confidentiality will continue to apply at all times during the continuance of any Contract incorporating these Conditions and for a period of 5 years after the expiration or termination of the Contract but will cease to apply to information which is at the date of the disclosure public knowledge through no fault of the receiving party, or which is rightfully received by the receiving party without obligations of confidentiality, or is developed by the receiving party without breach of these Conditions. If the receiving party is required to disclose Confidential Information to a government body, court or other official department with the authorization to issue such request subject to a legal or regulatory requirement, the receiving party agrees to give the disclosing party prompt notice so that disclosing party may contest the disclosure or obtain a protective order.
- 15.3 Each disclosing party shall have the right, immediately upon expiration or earlier termination of the Contract (for any reason whatsoever), to request the receiving party to return all Confidential Information in its possession.

**16. FORCE MAJEURE**

- 16.1 If performance of any obligation of either Party under the Contract is prevented, restricted or delayed by any act of God, act or omission of government, war, hostilities, acts of terrorism, industrial dispute, failure or delay in source of supply of materials or equipment, fire, explosion, or by any cause (whether similar

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or not to any of the above events) beyond the reasonable control of the party whose performance is affected, then that party shall be excused from and shall not be liable for failure in performance to the extent of that prevention, restriction or delay and the time for performance shall be extended accordingly.

16.2 If performance is delayed for more than 3 months by any cause referred to above and the Parties have not agreed upon a revised basis for continued performance at the end of the delay, then either Party may after that period, and while the cause of the non-performance still exists, terminate the Contract by not less than 30 days' notice in writing to the other Party.

**17. TERMINATION AND SUSPENSION**

17.1 Either Party may immediately terminate a Contract by giving written notice to the other Party, if the other Party: (i) commits a material breach of the Contract which is not capable of remedy, (ii) commits a continuing breach of the Contract or of these Conditions and fails to remedy it within 15 days of a written notice requiring the breach to be remedied; (iii) is dissolved, becomes insolvent, is over indebted, fails or is unable to or admits in writing its inability to pay its debts, institutes or has instituted against it proceedings seeking a judgment of insolvency or bankruptcy, has a resolution passed for its winding up or liquidation, seeks or becomes the subject of the appointment of an administrator, receiver or similar official in respect of its assets; or (iv) ceases or threatens to cease to carry on business.

17.2 The Seller may at its option suspend performance of the Contract: (i) until the events giving rise to the exercise of its rights of termination under clause 17.1(ii) are remedied; or (ii) if the Buyer has failed to make payment when due or to perform on time any of its other obligations under the Contract. The Seller shall be entitled to: (i) exercise its rights of termination or suspension at any time during which the event of default giving rise thereto shall not have ceased or have been remedied, and for the avoidance of doubt if the Seller has elected to suspend its performance it may at any time during the period of suspension decide to terminate the Contract; (ii) the time for Seller's completion shall be extended to such extent as is reasonable to take account of such suspension; and (iii) any cost incurred by the Seller as a result of or in connection with such suspension shall be reimbursed to the Seller by the Buyer.

17.3 No notice of termination may be given by either Party except in accordance with the express provisions of these Conditions.

17.4 Within 15 days of the issue by either Party of a notice of termination, the Buyer shall pay to the Seller the outstanding balance of the Contract value of the Goods which have been delivered at the date of the notice.

17.5 Termination or expiration of this Contract shall be without prejudice to: (i) either Party's obligations contained herein which survive the termination or expiration of this Contract; and (ii) any prior rights which either Party has accrued prior to the termination or expiration of this Contract.

**18. MISCELLANEOUS**

18.1 The Seller may perform its obligations and exercise the rights granted under these Conditions through any Affiliate or carry out its obligations through any agents or sub-contractors appointed by it in its absolute discretion for that purpose, and any act or omission of any such entity will for the purposes of these Conditions be the act or omission of the Seller.

18.2 Each right or remedy of a Party under the Contract is without prejudice to any other right or remedy of the party whether under the Contract or not.

18.3 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, or unenforceable it shall, to the extent of such illegality, invalidity, voidness, voidability, or unenforceability, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

18.4 Failure or delay by a party in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

18.5 The failure by either Party to exercise or enforce any rights conferred by the Contract shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

18.6 The Seller may assign the rights and obligations of any Contract or any part of it to any of its Affiliates. Any other assignment of this Contract shall not be permitted unless the other party consents in writing to such assignment (such consent not to be unreasonably withheld or delayed).

18.7 Notices must be in writing and delivered by hand, first class post, or facsimile to the other party at its registered office or trading address at the date of the Contract.

18.8 This Contract shall be governed by and construed in accordance with the laws of the State of Victoria, Australia. All disputes arising in connection with the Contract or its validity or these Conditions or their validity shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with said Rules unless the parties agree on one (1) arbitrator. The arbitration shall take place in Melbourne, Australia and the arbitration proceedings shall be conducted in the English language. The decision rendered by the said Commission should be final and binding upon both parties; neither Party shall seek recourse to a law court or other authorities for revising the decision. The arbitration fee shall be borne by the losing party. Both parties shall continue the fulfilment of the Contract except the parts in arbitration.

18.9 The parties unconditionally and irrevocably submit to the exclusive jurisdiction of the courts of the State of Victoria.

18.10 The Goods provided by Seller under this Contract contain or might contain components and/or technologies from U.S, EU and/or other nations. Buyer acknowledges and agrees that the supply, assignment and/or usage of the products, software, services, information, other deliverables and/or the embedded technologies (hereinafter referred to as "Deliverables") under this Contract shall fully comply with related applicable US, EU and other national and international export control laws and/or regulations. The Deliverables shall not be used for those purposes forbidden by the applicable export control laws and/or regulations. Buyer also agrees that the Deliverables will not be used either directly or indirectly in any rocket systems or unmanned air vehicles; nor be used in any nuclear weapons delivery systems; and will not be used in any design, development, production or use for any weapons which may include but not limited to chemical, biological or nuclear weapons. The Deliverables shall only be used in the specific project(s) and location (s) stipulated in this Contract. If any necessary or advisable licenses, authorizations or approvals are not obtained, whether arising from inaction by any relevant government authority or otherwise, or if any such licenses, authorizations or approvals are denied or revoked, or if the applicable export control laws and/or regulations would prohibit Seller from fulfilling any order, or would in Seller's judgment otherwise expose Seller to a risk of liability under the applicable export control laws and/or regulations if it fulfilled the order, Seller shall be excused from all obligations under such order and/or this Contract.

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- 18.11 The United Nations “Convention on Contracts for the International Sale of Goods” signed in Vienna in 1980 shall not apply to this Contract.
- 18.12 The Parties agree that no condition of, or benefit conferred by, the Contract will be enforceable by any third party.