
Opteco Pty Ltd – Terms & Conditions of Trade

The Parties agree to be bound by the following terms and conditions from the date of the first order of the Goods by the Buyer or on the date of approval of the Buyer's credit application by the Seller, whichever is earlier, regardless of whether the Buyer has signed these terms and conditions. The Seller recommends that the Buyer seeks legal advice about these terms and conditions before signing them.

1. Acceptance

- 1.1 The Buyer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Buyer places an order for or accepts delivery of the Goods.
- 1.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Buyer and the Seller.
- 1.3 Any advice, recommendation, information, assistance or service provided by the Seller in relation to Goods or Services supplied is given in good faith, is based on the Seller's own knowledge and experience and shall be accepted without liability on the part of the Seller and it shall be the responsibility of the Buyer to confirm the accuracy and reliability of the same in light of the use to which the Buyer makes or intends to make of the Goods or Services.
- 1.4 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.
- 1.5 The Buyer acknowledges and accepts that:
 - (a) where a Buyer wishes to operate a credit account with the Seller, a credit application must be completed and approved with a credit limit established first, prior to the initial delivery and/or supply of Goods; and
 - (b) in the event that the supply of Goods request exceeds the Buyer's credit limit and/or the account exceeds the payment terms, the Seller reserves the right to refuse delivery and/or request an alternative payment method; and
 - (c) the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, the Seller reserves the right to vary the Price with alternative Goods as per clause 4.3, subject to prior confirmation and agreement of both parties. The Seller also reserves the right to halt all Services until such time as the Seller and the Buyer agree to such changes. The Seller shall not be liable to the Buyer for any loss or damage the Buyer suffers due to the Seller exercising its rights under this clause.
- 1.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

2. Errors and Omissions

- 2.1 The Buyer acknowledges and accepts that the Seller shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):

- (a) resulting from an inadvertent mistake made by the Seller in the formation and/or administration of this contract; and/or
- (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Seller in respect of the Services.

- 2.2 In the event such an error and/or omission occurs in accordance with clause 2.1, and is not attributable to the negligence and/or wilful misconduct of the Seller; the Buyer shall not be entitled to treat this contract as repudiated nor render it invalid.

3. Change in Control

- 3.1 The Buyer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Buyer and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's name, address, contact phone or fax number/s, or business practice). The Buyer shall be liable for any loss incurred by the Seller as a result of the Buyer's failure to comply with this clause.

4. Price and Payment

- 4.1 The Buyer must pay the Price to the Seller for the Goods in accordance with this clause 4.
- 4.2 At the Seller's sole discretion, the Price shall be either:
 - (a) as indicated on any invoice provided by the Seller to the Buyer; or
 - (b) the Price as at the date of delivery of the Goods according to the Seller's current price list; or
 - (c) the Seller's quoted price (subject to clause 4.3) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.3 The Seller reserves the right to change the Price:
 - (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) if during the course of the Services, the Goods are not or cease to be available from the Seller's third party suppliers, then the Seller reserves the right to provide alternative Goods; or
 - (d) in the event of increases to the Seller in the cost of labour or materials which are beyond the Seller's control.
- 4.4 Variations will be charged for on the basis of the Seller's quotation, and will be detailed in writing, and shown as variations on the Seller's invoice. The Buyer shall be required to respond to any variation submitted by the Seller within ten (10) working days. Failure to do so will entitle the Seller to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 4.5 At the Seller's sole discretion, a non-refundable deposit may be required.
- 4.6 Time for payment for the Goods being of the essence, the Price will be payable by the Buyer on the date/s determined by the Seller, which may be:
 - (a) on delivery of the Goods;
 - (b) before delivery of the Goods;
 - (c) by way of instalments/progress payments in accordance with the Seller's payment schedule;

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- (d) thirty (30) days following the end of the month in which a statement is posted to the Buyer's address or address for notices;
- (e) the date specified on any invoice or other form as being the date for payment; or
- (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Buyer by the Seller.
- 4.7 Payment may be made by cash, cheque, bank cheque, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Buyer and the Seller.
- 4.8 The Buyer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Buyer by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5. GST**
- 5.1 Unless expressly stated otherwise the Price and/or any other amount which must be paid by the Buyer is exclusive of GST.
- 5.2 In addition to the Price the Buyer must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other contract for the sale of the Goods. The Buyer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Buyer pays the Price. In addition, the Buyer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6. Delivery of Goods**
- 6.1 Delivery of the Goods is taken to occur at the earliest time that:
- (a) the Buyer or the Buyer's nominated carrier takes possession of the Goods at the Seller's address; or
- (b) the Seller (or the Seller's nominated carrier) delivers the Goods to the Buyer's nominated address even if the Buyer is not present at the address.
- ("Delivery")
- 6.2 Delivery of the Goods to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of this Agreement.
- 6.3 The Buyer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that;
- (a) such discrepancy in quantity shall not exceed 1.5%, and
- (b) the Price shall be adjusted pro rata to the discrepancy.
- 6.4 At the Seller's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 6.5 Any time specified by the Seller for delivery of the Goods is an estimate only. The Buyer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. The Seller will not be liable for any Loss or damage, whether direct or indirect, incurred by the Buyer or a third party as a result of delivery being late. In the event that the Buyer is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.6 The Seller may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7. Risk**
- 7.1 Risk of damage to or loss of the Goods passes to the Buyer on Delivery, whether the full payment of amounts due to the Seller has been paid or not.
- 7.2 The Buyer must insure the Goods for the full value of the Goods under a comprehensive policy of insurance, in the names of the Buyer and Seller and at the cost of the Buyer, against all risk of loss and damage including fire, accident, malicious damage, theft and such other risks that the Seller may from time to time require, from the earlier of:
- (a) the date of Delivery of the Goods to the Buyer; or
- (b) the date the Goods leave the Seller's premises.
- 7.3 For the avoidance of doubt, clause 7.2 will not apply if the Buyer has pre-arranged with the Seller for the Seller to insure the Goods on the Buyer's behalf and at the Buyer's sole expense.
- 7.4 If any of the Goods are damaged or destroyed following Delivery but prior to title passing to the Buyer in accordance with clause 9, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 7.5 If the Buyer requests the Seller to leave Goods outside the Seller's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Buyer's sole risk.
- 8. Specifications**
- 8.1 The Buyer acknowledges that all descriptive specifications, illustrations, dimensions and weights stated in the Seller's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Buyer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by the Seller.
- 9. Title**
- 9.1 The Seller and the Buyer agree that ownership and title in the Goods will not pass until:
- (a) the Buyer has paid the Seller all amounts owing to the Seller; and
- (b) the Buyer has met all of its other obligations to the Seller.
- 9.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 9.3 It is further agreed that, until title of the Goods passes to the Buyer in accordance with clause 9.1:
- (a) the Buyer is only a bailee of the Goods and must return the Goods to the Seller on request.
- (b) the Buyer holds the benefit of the Buyer's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Buyer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value.
- (d) If the Buyer sells, disposes or parts with possession of the Goods then the Buyer must hold the proceeds of any

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- such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand.
- (e) the Buyer should not convert or process the Goods or intermix them with other goods but if the Buyer does so then the Buyer holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs.
- (f) the Buyer irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods.
- (g) the Seller may recover possession of any Goods in transit whether or not delivery has occurred.
- (h) the Buyer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Seller.
- (i) the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that title of the Goods has not passed to the Buyer.
- 9.4 The Buyer agrees to indemnify the Seller against:
- (a) any Claim or Costs arising out of any such action by the Seller under clause 9.3(i); and
- (b) any damage or Loss to the Goods until they are fully paid for by the Buyer.
- 10. Personal Property Securities Act 2009 (“PPSA”)**
- 10.1 In this clause the terms ‘Financing Statement’, ‘Financing Change Statement’, ‘Security Agreement’, ‘Collateral’ and ‘Security Interest’ have the meaning given to it by the PPSA.
- 10.2 The Buyer acknowledges and agrees that these terms and conditions constitute a Security Agreement for the purposes of the PPSA and create a Security Interest:
- (a) in all Goods and/or Collateral that have previously been supplied and that will be supplied in the future by the Seller to the Buyer; and
- (b) the proceeds of any of the items in clause 10.2(a).
- 10.3 The Buyer irrevocably authorises the Seller to register this Security Interest on the PPSR.
- 10.4 The Buyer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which the Seller may reasonably require to;
- (i) register a Financing Statement or Financing Change Statement in relation to a Security Interest on the PPSR;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 10.4(a)(i) or 10.4(a)(ii);
- (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPSR or releasing any Security Interest;
- (c) not register a Financing Change Statement in respect of a Security Interest without the prior written consent of the Seller;
- (d) not register, or permit to be registered, a Financing Statement or a Financing Change Statement in relation to the Goods and/or Collateral (account) in favour of a third party without the prior written consent of the Seller;
- (e) immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.5 The Buyer acknowledges and agrees that the Seller will have the power to seize, retain or dispose of the Collateral, in accordance with Chapter 4 of the PPSA, however the Buyer also agrees:
- (a) to waive its rights it would otherwise have under the PPSA to receive notices under sections 95 (intention to remove accession), 118 (enforcement under land law), 121(4) (enforcement action against liquid assets), 130 (disposal of Goods), 132(2) (statement of account following disposal), 132(4) (statement of account if not disposal of Goods), 135 (proposal to retain Goods) of the PPSA;
- (b) to waive its rights it would otherwise have under the PPSA as a Grantor and/or debtor under sections 137(2) (to object to proposal of the Company to retain Goods), 142 (to redeem Goods) and 143 (reinstate security agreement) of the PPSA; and
- (c) to waive its rights it would otherwise have under the PPSA to receive a verification statement in accordance with section 157 of the PPSA; and
- (d) that sections 96, 125, 132(3)(d) of the PPSA do not apply.
- 10.6 The Buyer must unconditionally ratify any actions taken by the Seller under clauses 10.4 to 10.5.
- 10.7 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 11. Security and Charge**
- 11.1 In consideration of the Seller agreeing to supply the Goods, the Buyer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Buyer either now or in the future, to secure the performance by the Buyer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Buyer indemnifies the Seller from and against all the Seller’s costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller’s rights under this clause.
- 11.3 The Buyer irrevocably appoints the Seller and each director of the Seller as the Buyer’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Buyer’s behalf.
- 12. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 12.1 Subject to clause 12.2 and to the extent permitted by law, all liability, conditions and warranties in respect of the provision of the Goods, whether express or implied, statutory or otherwise, are excluded.
- 12.2 This clause does not exclude, restrict or modify any condition, warranty, right or remedy implied by law (including the Competition and Consumer Act 2010) and which cannot be excluded, restricted or modified.
- 12.3 To the extent permitted by law, the Seller will not be liable for any defect or damage caused to the Goods caused by:
- (a) the Buyer failing to properly maintain or store the Goods;
- (b) the Buyer using the Goods for any purpose other than for which they have been designed;

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- (c) the Buyer continuing to use the Goods after any defect becomes apparent or should have become apparent to a reasonably prudent operator or user;
- (d) the Buyer failing to follow the Seller's instructions or guidelines;
- (e) the re-modification or re-configuration of the Goods by the Buyer or a third party; or
- (f) fair wear and tear, any accident, or ac of God.
- 12.4 To the extent permitted by law, the Buyer shall not have any rights under this clause 12 until all outstanding amounts due and payable have been paid to the Seller.
- 12.5 The Seller may in its absolute discretion accept non-defective Goods for return in which case the Seller may require the Buyer to pay handling fees of up to ten percent (20%) of the value of the returned Goods plus any freight costs.
- 12.6 Subject to clause 12.1, customised, or non-stocklist items or Incidental Items made or ordered to the Buyer's specifications are not acceptable for credit or return.
- 13. Intellectual Property**
- 13.1 Where the Seller has designed, drawn or developed Goods for the Buyer, then the Intellectual Property in any designs and drawings and documents shall remain the property of the Seller. Under no circumstances may such Intellectual Property be used without the express written approval of the Seller.
- 13.2 The Buyer warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Buyer's order and the Buyer agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.
- 13.3 The Buyer agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Seller has created for the Buyer.
- 14. Default and Consequences of Default**
- 14.1 Interest on overdue invoices and payment of the Price to the Seller shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Buyer owes the Seller any money the Buyer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's contract default fee, and bank dishonour fees).
- 14.3 Further to any other rights or remedies the Seller may have under this contract, if a Buyer has made payment to the Seller, and the transaction is subsequently reversed, the Buyer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Seller under this clause 14 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Buyer's obligations under this contract.
- 14.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to make a payment when it falls due;
- (b) the Buyer has exceeded any applicable credit limit provided by the Seller;
- (c) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer.
- 15. Cancellation**
- 15.1 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the supply of Goods to the Buyer. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller has exercised its rights under this clause.
- 15.2 The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Buyer. On giving such notice the Seller shall repay to the Buyer any money paid by the Buyer for the Goods. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.3 In the event that the Buyer cancels delivery of Goods the Buyer shall be liable for any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 15.4 Cancellation of orders for Goods made to the Buyer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 16. Privacy Act 1988**
- 16.1 In accordance with the Privacy Act 1988, the Buyer authorises the Seller to obtain such information as it requires to determine the Buyer's credit worthiness. This will be used as a guideline in setting credit limits and may be used for debt collection purposes.
- 17. Buyer's Disclaimer and Indemnity**
- 17.1 The Buyer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller and the Buyer acknowledges that the Buyer shall buy the Goods relying solely upon their own skill and judgement and that the Seller shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the manufacturer which warranty shall be personal to the Buyer and shall not be transferable to any subsequent Buyer.
- 17.2 The Buyer shall comply with all occupational health and safety laws relating to the Goods and their operation.
- 17.3 The Buyer acknowledges that the Seller will not be held liable for any indirect or consequential damages or claims due to any injury caused by the Goods during installation or use.

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- 17.4 The Buyer shall indemnify the Seller, their employees, officers, agents and contractors:
- (a) in respect of any Claims, demands, proceedings, costs, charges and other expenses caused by, arising out of or in any way connected with any special, consequential, direct or indirect loss, damage, harm or injury suffered by any other person arising from the use of the Goods, including but not limited to use of the Goods contrary to the important Safety Warnings provided by the Seller to the Buyer;
 - (b) from and against any Loss, Costs, Claims, damages, expenses (including legal costs and expenses on a solicitor/client basis), liabilities, proceedings or demands, whether direct or indirect, incurred or suffered by the Seller as a result of:
 - (i) any breach by the Buyer of these terms and conditions, or any wilful, negligent or unlawful act or omission by the Buyer (or the Buyer's employees, officers, agents or contractors); or
 - (ii) the Seller recovering any Goods in accordance with these terms and conditions.
- 17.5 If the Buyer has any questions relating to the operation and safety of the Goods and/or in relation to the Safety Warnings they can contact the Seller at sale@opteco.com.au.
- 18. Service of Notices**
- 18.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this contract;
 - (c) by sending it by registered post to the address of the other party as stated in this contract;
 - (d) if sent by email to the other party's last known email address.
- 18.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 19. Guarantee and Indemnity**
- 19.1 The Guarantor agrees that the Buyer has entered into these terms and conditions with the Seller at the request of the Guarantor and in consideration of the guarantee and indemnity in this clause 19.
- 19.2 The Guarantor unconditionally and irrevocably guarantees to the Seller:
- (a) the payment, when due, of any amounts which are payable or become liable to be paid by the Buyer to the Seller; and
 - (b) the due and prompt performance by the Buyer of all of their obligations, and any variation agreed to by the Parties.
- 19.3 The Guarantor indemnifies the Seller against any Losses, Costs, charges and expenses of any nature which the Seller might incur as a result of any default by the Buyer under these terms and conditions.
- 19.4 The guarantee is a principal obligation of the Guarantor and must not be treated as ancillary or collateral to any other obligation.
- 19.5 The Seller may enforce this guarantee against the Guarantor without first being required to exhaust any remedy the Seller may have against the Buyer.
- 19.6 This guarantee will not be wholly or partially discharged by the payment at any time of any amount or by the settlement of any account by the Buyer to the Seller.
- 19.7 If the Buyer defaults in:
- (a) the payment of any amount due, the Guarantor must on demand pay that amount to the Seller; and
 - (b) the performance of any of the Buyer's other obligations under this Agreement, the Guarantor must on demand pay to the Seller all Loss, damage and Costs which the Seller are entitled to recover because of that default.
- 19.8 The liability of the Guarantor will not be affected by anything which but for this provision would release the Guarantor from the Guarantor's obligations including:
- (a) the grant to the Buyer of any time, waiver or other indulgence, discharge or release;
 - (b) if the Buyer becomes insolvent;
 - (c) if the Seller exercises or refrains from exercising any other security, guarantee or any rights conferred on the Seller by law, by these terms and conditions or by any other agreement;
 - (d) the variation, extinguishment, unenforceability, release, discharge, or transfer either in whole or in part of these terms and conditions or any other security or guarantee now or in the future held by the Seller;
 - (e) the Buyer's obligations or any part of them being or becoming wholly or partially illegal, void, voidable or unenforceable;
 - (f) any failure by the Seller to give notice to the Guarantor of any default by the Buyer;
 - (g) any legal limitation, disability, incapacity or other circumstances relating to the Buyer and or either Guarantor; and
 - (h) the transfer or assignment upon any terms or conditions whatsoever of the Buyer's interest or rights.
- 20. Trusts**
- 20.1 If the Buyer at any time upon or subsequent to entering into the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Seller may have notice of the Trust, the Buyer covenants with the Seller as follows:
- (a) the contract extends to all rights of indemnity which the Buyer now or subsequently may have against the Trust and the trust fund;
 - (b) The Buyer has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Buyer against the Trust or the trust fund. The Buyer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
 - (c) the Buyer will not without consent in writing of the Seller (the Seller will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Buyer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;

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- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust property.
- 21. Force Majeure**
- 21.1** If the performance of any of the Seller's obligations is prevented, hindered or delayed by or in consequence of any cause or event beyond the Seller's reasonable control, the Seller will be entitled, on giving notice to the Buyer:
- (a) to make partial or delayed Delivery of or suspend the supply of the Goods; or
- (b) to terminate the supply, without liability and without prejudice to rights which have already accrued to the Seller in respect of any part of the Goods already supplied.
- 22. General**
- 22.1** These terms and conditions supersede any prior negotiations or representations and cannot be changed unless the Parties agree in writing.
- 22.2** The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision.
- 22.3** If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 22.4** These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria, the state in which the Seller has its principal place of business, and are subject to the jurisdiction of the Bendigo Courts in Victoria.
- 22.5** The Seller's liability under this Agreement, whether in contract, tort or otherwise shall, to the maximum extent permitted by law be limited to repairing or replacing the Goods.
- 22.6** Subject to clause 12, the Seller shall be under no liability whatsoever to the Buyer for any indirect and/or consequential loss and/or expense (including loss of profit, loss of business or business interruption) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.
- 22.7** The Seller may assign, novate, licence or transfer all or any part of its rights and/or obligations under this contract without the Buyer's consent.
- 22.8** The Buyer cannot licence or assign without the prior written approval of the Seller.
- 22.9** The Seller may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Buyer agrees and understands that they have no authority to give any instruction to any of the Seller's sub-contractors without the authority of the Seller.
- 22.10** The Buyer agrees that the Seller may amend these terms and conditions by notifying the Buyer in writing. These changes shall be deemed to take effect from the date on which the Buyer accepts such changes, or otherwise at such time as the Buyer makes a further request for the Seller to provide Goods to the Buyer.
- 22.11** Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 22.12** The Parties are independent contracting parties and nothing in these terms and conditions will establish any relationship of agency or authorise a party to create an obligation on behalf or in the name of the other party.
- 22.13** Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.
- 23. Definitions**
- In these terms and conditions:
- 23.1** "Agreement" means the agreement formed when the Buyer completed the Application attached to these terms and conditions and includes the Application and the attached terms and conditions.
- 23.2** "Buyer" means a person, corporation, firm, trust or body who acquires Goods from the Seller under this Agreement as stated on page 1 of this Agreement and includes any person/s or any person acting on behalf of and with the authority of the Buyer and:
- (a) if there is more than one Buyer, is a reference to each Buyer jointly and severally; and
- (b) if the Buyer is a part of a Trust, shall be bound in their capacity as a trustee; and
- (c) includes the Buyer's executors, administrators, successors and permitted assigns.
- 23.3** "Claim" includes claim, demand, threat or proceedings.
- 23.4** "Costs" means and includes all Loss, damage, costs, contributions and expenses, including legal costs and expenses incurred in bringing, defending or settling any Claim.
- 23.5** "Goods" means all Goods or Services supplied by the Seller to the Buyer at the Buyer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 23.6** "Grantor" means the Buyer and has the same meaning as set out in the PPSA.
- 23.7** "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 23.8** "Guarantor" is the person describe in the attached application attached to these terms and conditions as the guarantor.
- 23.9** "Intellectual Property" includes all intellectual property rights including but not limited to copyright, future copyright, patents, trade/business or company names, registered and unregistered trade marks, registered and registrable designs, trade secrets, Know How rights in relation to circuit layouts and all other rights of intellectual property as recognised by the law in force in Victoria.
- 23.10** "Know How" means scientific, technical and other information which is not in the public domain including inventions, discoveries, concepts, data, biological and chemical formulae, biological and chemical materials, ideas, specifications, procedures for experiments and tests and results of experiments, experimentation and testing, results of research and development and information in laboratory records, case reports, data analyses and summaries and submissions to and information from ethics committees and regulatory authorities.
- 23.11** "Loss" includes loss, liability, Claim, cost, injury, death, demand, threat, damage, penalty or expense (including legal costs in connection with same on a full indemnity basis).

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- 23.12 "Parties" means the parties to this Agreement, being the Seller and the Buyer.
- 23.13 "PPSA" means Personal Property Securities Act 2009 (Cth) as modified or replaced from time to time.
- 23.14 "PPSR" means the Personal Property Securities Register established under the PPSA.
- 23.15 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between the Seller and the Buyer in accordance with clause 4 below.
- 23.16 "Safety Warnings" means the product safety warnings attached at Annexure A to these terms and conditions as amended from time to time by the Seller.
- 23.17 "Seller" means Opteco Pty Ltd (A.C.N 651 533 532), its successors and assigns or any person acting on behalf of and with the authority of Opteco Pty Ltd (A.C.N 651 533 532).

ANNEXURE A TO TERMS AND CONDITIONS – GOODS SAFETY WARNINGS

For the purposes of these safety warnings, the Goods as defined under the term and conditions means the cutting tool/sawblades supplied by the Seller to the Buyer.

GENERAL SAFETY

The Seller:

- requires the Buyer to read and retain these cutting tool/sawblade safety warnings for future reference;
- confirms that incorrect use of cutting tool/sawblade may cause serious or fatal injury; and
- requires the Buyer to ensure that the cutting tool/sawblade, when installed, meet OH&S regulations and standards.

The Seller also recommends the following in relation to safety and service:

MACHINE SAFETY

- Isolate machine at power source before inspecting or changing cutting tool/sawblade.
- Read machine manufacturer's instructions before installing or using cutting tool/sawblade.
- Machine guards and safety features must be functional and according to regulations.
- Machine specifications, speed and cutting direction must be correct and fit-for-purpose.
- Only install cutting tool/sawblade to equipment where the blade meets with equipment manufacturer's specifications.

CUTTING TOOL SAFETY

- Caution must be used when unpacking and transporting sharp edged tools.
- Inspect for damage. Damaged, cracked or fractured cutting tools/sawblades must not be used.
- Cutting tool/sawblade must be correct type for material being cut.

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- Installation of cutting tool/sawblade must be by trained and qualified personnel.

PERSONAL SAFETY

- Before using the cutting tool/sawblade, always assess your entire task for personal safety and the safety of others.
- Only proceed with task if it can be done safely.
- Use personal safety protection. Respiration protection may be required when sawing some materials.

CUTTING TOOL SERVICE

- The cutting tool/sawblade must be inspected, sharpened and serviced only by qualified personnel when:
 - a) The power consumption of the machine rises noticeably.
 - b) The main cutting edge develops an identifiable wear zone-
 - c) The quality of the cut surface is no longer acceptable.
- Inspect for damage. Damaged, cracked or fractured cutting tools/sawblades must not be used

Grinding of tungsten carbide cutting tools will produce mist or dust containing potentially hazardous ingredients. Safety information may be provided by your supplier.