

### 1. Definitions

- 1.1 "Engineer" shall mean Toolcraft Pty Ltd and its successors and assigns.
- 1.2 "Client" shall mean the Client or any person acting on behalf of and with the authority of the Client.
- 1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Engineer to the Client (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.5 "Services" shall mean all services supplied by the Engineer to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).
- 1.6 "Price" shall mean the cost of the Goods as agreed between the Engineer and the Client subject to clause 4 of this contract.

### 2. Acceptance

- 2.1 Any instructions received by the Engineer from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by the Engineer shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Client's shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Engineer.
- 2.4 None of the Engineer's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Engineer in writing nor is the Engineer bound by any such unauthorised statements.
- 2.5 The Client undertakes to give the Engineer not less than fourteen (14) days prior written notice of any proposed change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice).

### 3. Goods

- 3.1 The Goods and/or Services are as described on the invoices, quotation, work authorisation, tender or any other work commencement forms as provided by the Engineer to the Client.

### 4. Price And Payment

- 4.1 At the Engineer's sole discretion, the Price shall be either;
  - (a) The Price shall be as indicated on invoices provided by the Engineer to the Client in respect of Goods supplied; or
  - (b) The Price of the Goods shall (subject to clause 4.2) be the Engineer's quoted Price which shall be binding upon the Engineer provided that the Client shall accept in writing the Engineer's quotation within fourteen (14) days.
- 4.2 Any variation from the plan of scheduled works or specifications will be charged for on the basis of the Engineer's quotation and will be shown as extras on

the invoice. Payment for all extras must be made in full at their time of completion.

- 4.3 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated, then payment shall be on delivery of the Goods.
- 4.4 The Engineer may withhold delivery of the Goods until the Client has paid for them, in which event payment shall be made before the delivery date.
- 4.5 At the Engineer's sole discretion, payment for approved Clients shall be made by instalments in accordance with the Engineers delivery/payment schedule.
- 4.6 At the Engineer's sole discretion, payment for approved Clients shall be due on 30<sup>th</sup> day of each month following the posting of a statement to the Client's address or address for notices.
- 4.7 At the Engineer's sole discretion, for certain approved Clients payment will be due seven (7) days following the date of the invoice.
- 4.8 Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and the Engineer.
- 4.9 The Price shall be increased by the amount of any GST and other taxes and duties, which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Engineer.

### 5. Delivery Of Goods / Services

- 5.1 Delivery of the Goods shall be made to the Client's address. The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Client at the Engineer's address.
- 5.2 Delivery of the Goods to a carrier, either named by the Client or failing such naming to a carrier at the discretion of the Engineer for the purpose of transmission to the Client, is deemed to be a delivery of the Goods to the Client.
- 5.3 The costs of carriage and any insurance which the Client reasonably directs the Engineer to incur shall be reimbursed by the Client (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Client's agent.
- 5.4 Where there is no agreement that the Engineer shall send the Goods to the Client, delivery to a carrier at limited carrier's risk at the expense of the Client is deemed to be delivery to the Client.
- 5.5 The Engineer may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract of sale.
- 5.6 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 5.7 The Client 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 5%, and

(b) the Price shall be adjusted pro rata to the discrepancy.

- 5.8 The failure of the Engineer to deliver shall not entitle either party to treat this contract as repudiated.
- 5.9 The Engineer shall not be liable for any loss or damage whatsoever due to failure by the Engineer to deliver the Goods (or any of them) promptly or at all.

### 6. Risk

- 6.1 If the Engineer retains property in the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Client, the Engineer is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions of Trade (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Contract. The production of these terms and conditions by the Engineer is sufficient evidence of the Engineer's rights to receive the insurance proceeds without the need for any person dealing with the Engineer to make further enquiries.

### 7. Client's Disclaimer

- 7.1 The Client 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 Engineer and the Client acknowledges that he buys the Goods relying solely upon his own skill and judgement and that the Engineer 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 Client and shall not be transferable to any subsequent Client.

### 8. Defect/Returns

- 8.1 The Engineer will notify the Client of changes in goods and/or services and where required, obtain Client approval.
- 8.2 The Client shall inspect the Goods on delivery and shall within fourteen (14) days of delivery notify the Engineer of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Engineer an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 8.3 For defective Goods, which the Engineer has agreed in writing that the Client is entitled to reject, the Engineer's liability is limited to either (at the Engineer's discretion) replacing the Goods or repairing the Goods provided that:
- (a) the Client has complied with the provisions of clause 8.1;
  - (b) the Goods are returned at the Client's cost within fourteen (14) days of the delivery date;
  - (c) the Engineer will not be liable for Goods which have not been stored or used in a proper manner;

(d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonable possible in the circumstances.

- 8.3 The Engineer may (in its discretion) accept the Goods for credit but this may incur a handling fee of 35% of the value of the returned Goods plus any freight.

### 9. Warranty

For Goods not manufactured by the Engineer, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Engineer shall be under no liability whatsoever, except for the express conditions as detailed and stipulated in the manufacturers warranty.

### 10. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts

- 10.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair-Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

### 11. Intellectual Property

- 11.1 Where the Engineer has designed or drawn Goods for the Client, then the copyright in those designs and drawings shall remain vested in the Engineer, and shall only be used by the Client at the Engineer's discretion.
- 11.2 Conversely, in such a situation, where the Client has supplied drawings, the Engineer in its sale conditions may look for an indemnity (the specifications and design of the Goods (including the copyright, design right or other intellectual property in them) shall as between the parties be the property of the Engineer).
- 11.3 Where any designs or specifications have been supplied by the Client for manufacture by or to the order of the Engineer then the Client warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.
- 11.4 The Client warrants that all designs or instructions to the Engineer will not cause the Engineer to infringe any patent, registered design or trademark in the execution of the Clients order.

### 12. Default & Consequences Of Default

- 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% compounding per calendar month and shall accrue at such a rate after as well as before any judgement.
- 12.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Engineer from and against all the Engineer's costs and disbursements including on a solicitor and own client basis and in addition all of the Engineer's nominees costs of collection.
- 12.3 Without prejudice to any other remedies the Engineer may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Engineer may suspend or terminate the supply of

Goods to the Client and any of its other obligations under the terms and conditions. The Engineer will not be liable to the Client for any loss or damage the Client suffers because the Engineer exercised its rights under this clause.

12.4 If any account remains unpaid at the end of the second month after supply of the goods or services the following shall apply: An immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable in addition to the interest payable under clause 12.1 hereof.

12.5 In the event that:

- (a) any money payable to the Engineer becomes overdue, or in the Engineer's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client 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
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client; then without prejudice to the Engineer's other remedies at law
- (i) the Engineer shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies; and
- (ii) all amounts owing to the Engineer shall, whether or not due for payment, immediately become payable.

### **13. Title**

13.1 It is the intention of the Engineer and agreed by the Client that property in the Goods shall not pass until:

- (a) The Client has paid all amounts owing for the particular Goods, and
- (b) The Client has met all other obligations due by the Client to the Engineer in respect of all contracts between the Engineer and the Client, and that the Goods shall be kept separate until the Engineer shall have received payment and all other obligations of the Client are met.

13.2 It is further agreed that:

- (a) Until such time as ownership of the Goods shall pass from the Engineer to the Client the Engineer may give notice in writing to the Client to return the Goods or any of them to the Engineer. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease.
- (b) If the Client fails to return the Goods to the Engineer then the Engineer or the Engineer's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.
- (c) The Client is only a bailee of the Goods and until such time as the Engineer has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods on trust for the Engineer.
- (d) The Client shall not deal with the money of the Engineer in any way which may be adverse to the Engineer.

(e) Receipt by the Engineer 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 and until then the Engineer's ownership of rights in respect of the Goods shall continue.

(f) The Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Engineer.

(g) The Engineer may require payment of the Price or the balance of the Price due together with any other amounts due from the Client to the Engineer arising out of these terms and conditions, and the Engineer may take any lawful steps to require payment of the amounts due and the Price.

(h) The Engineer can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client.

(i) Until such time the Client has the Engineer's authority to convert the goods into other products and if the goods are so converted, the parties agree that the Engineer will be the owner of the end products.

### **14. Security And Charge**

14.1 Despite anything to the contrary contained herein or any other rights which the Engineer may have howsoever:

(a) Where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Engineer or the Engineer's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Engineer (or the Engineer's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.

(b) Should the Engineer elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Engineer from and against all the Engineer's costs and disbursements including legal costs on a solicitor and own client basis.

(c) To give effect to the provisions of clause [14.1 (a) and (b)] inclusive hereof the Client and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Engineer or the Engineer's nominee as the Client's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registerable or not) including such other terms and conditions as the Engineer and/or the Engineer's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Client and/or the Guarantor in any land, realty or asset in favour of the Engineer and in the Client's and/or Guarantor's name as may be necessary to secure the said Client's and/or Guarantor's obligations and

indebtedness to the Engineer and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Engineer's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

### 15. Force Majeure

- 15.1 Toolcraft Pty Ltd is not liable for any delay or failure to perform an obligation under this agreement caused by a Force Majeure Event.
- 15.2 Toolcraft Pty Ltd will notify the Buyer as soon as practical of any anticipated delay or failure caused by a Force Majeure Event.
- 15.3 If a Force Majeure Event occurs, the performance of Toolcraft Pty Ltd obligations under this agreement is suspended for the period of delay caused by the Force Majeure Event.
- 15.4 Toolcraft Pty Ltd may terminate this agreement by giving the Buyer 14 days notice if it determines that it is not able to deliver the Goods to the Buyer within a reasonable time due to a Force Majeure Event.
- 15.5 If Toolcraft Pty Ltd terminates this Agreement under clause 15.4, all money previously paid under this Agreement for goods or services which have been provided, will be refunded to the Buyer within 30 days after termination.

### 16. Cancellation

The Engineer may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Engineer shall not be liable for any loss or damage whatsoever arising from such cancellation.

### 17. Privacy Act 1988

- 17.1 The Client and/or the Guarantor/s agree for the Engineer to obtain from a credit-reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the Engineer.
- 17.2 The Client and/or the Guarantor/s agree that the Engineer may exchange information about Client and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:
- (a) To assess an application by Client;
  - (b) To notify other credit providers of a default by the Client;
  - (c) To exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and
  - (d) To assess the credit worthiness of Client and/or Guarantor/s.
- 17.3 The Client consents to the Engineer being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 17.4 The Client agrees that Personal Data provided may be used and retained by the Engineer for the following purposes and for other purposes as shall be agreed between the Client and Engineer or required by law from time to time:

- (a) provision of Services & Goods;
- (b) marketing of Services and or Goods by the Engineer, its agents or distributors in relation to the Services and Goods;
- (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Services/Goods;
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and
- (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services and Goods.

17.5 The Engineer may give, information about the Client to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Client; and or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

### 18. Unpaid Engineer's Rights To Dispose Of Goods

18.1 In the event that:

- (a) the Engineer retains possession or control of the Goods; and
- (b) payment of the Price is due to the Engineer; and
- (c) the Engineer has made demand in writing of the Client for payment of the Price in terms of this contract; and
- (d) the Engineer has not received the Price of the Goods,

then, whether the property in the Goods has passed to the Client or has remained with the Engineer, the Engineer may dispose of the Goods and may claim from the Client the loss to the Engineer on such disposal.

### 19. Lien

19.1 Where the Engineer has not received or been tendered the whole of the price, or the payment has been dishonoured, the Engineer shall have:

- (a) a lien on the goods;
- (b) the right to retain them for the price while the Engineer is in possession of them;
- (c) a right of stopping the goods in transit whether or not delivery has been made or ownership has passed; and
- (d) a right of resale,
- (e) the foregoing right of disposal,

provided that the lien of the Engineer shall continue despite the commencement of proceedings or judgement for the price having been obtained

### 20. General

20.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

20.2 All Goods supplied by the Engineer are subject to the laws of South Australia and the Engineer takes no responsibility for changes in the law which affect the Goods supplied.

20.3 The Engineer shall be under no liability whatsoever to the Client for any indirect loss and/or expense

(including loss of profit) suffered by the Client arising out of a breach by the Engineer of these terms and conditions.

- 20.4 In the event of any breach of this contract by the Engineer the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of the Engineer exceed the Price of the Services.
- 20.5 The Client shall not set off against the Price amounts due from the Engineer.
- 20.6 The Engineer may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 20.7 The Engineer reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Engineer notifies the Client of such change.
- 20.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

### Toolcraft Pty Ltd Quality Clauses

#### 1. Control and Processing Nonconforming Material and Corrective Action

The Client shall implement and maintain a documented quality system that provides for identification, documentation, segregation and disposition of nonconforming material. Client shall ensure effective corrective action is taken to prevent, minimize, or eliminate non-conformances. Client's Quality Management System shall ensure that nonconforming material is not used for production purposes.

Client shall maintain records of all nonconforming material, dispositions, assignable causes, corrective actions, and effectiveness of corrective actions for the periods specified in the Purchase Order.

Client shall evaluate each non-conformance for its potential to exist in previously produced or delivered items. If a non-conformance exists, Client shall notify Toolcraft Pty Ltd, in writing, within 24 hours for issues impacting safety, and, in writing, within 5 working days for all other issues.

Client shall respond to all Toolcraft Pty Ltd requests for corrective action. When requested by Toolcraft Pty Ltd, Client shall provide trend data and findings for Toolcraft Pty Ltd returned items.

Client shall assess all identified non-conformances, whether or not item(s) was/were returned to client, and take appropriate actions to ensure causes of non-conformance are corrected. Client shall notify of actions taken to prevent recurrence by forwarding a Corrective & Preventive action report to Toolcraft Pty Ltd.

Client shall submit to Toolcraft Pty Ltd all details (such as specification, noncompliance and date work was performed) on all client rejections associated with work performed by an approved source.

#### 2. Changes to Client's Operations

The Client shall inform Toolcraft Pty Ltd, in writing, of any adverse change in its quality system status resulting in the loss of 3<sup>rd</sup> party registrar's certification status, or any action taken by the Client's customer, the Government or any other agency.

The Client shall also notify Toolcraft Pty Ltd upon any sale, relocation or transfer of Client's manufacturing operations or upon any change in the quality organization, process or procedures that affect conformity verification of items.

Notification shall be made within 30 days of such changes.

#### 3. Right of Access

The Client shall provide or obtain for Engineering, Toolcraft Engineering's customers and regulatory agency personnel, access to any and all facilities, including those facilities of Client's subcontractors, where work is being performed or is scheduled to be performed.

Toolcraft Pty Ltd shall have the right to perform in-process inspections, audits or system surveillance at Client's and Client's subcontractors facilities as part of verification of conformance to requirements of this purchase order. Denial of any such access may result in inactivation of Client's approval.

The client shall include the provisions of this facility access requirement in its Purchase Orders with its subcontractors.

#### 4. Records

The Client shall maintain complete records of all manufacturing, process capability (if applicable), inspection and test, including Certificates of Conformance. The Client shall make records available to Toolcraft Pty Ltd, Toolcraft's customers and regulatory authorities upon request for at least 10 years after completion of the Purchase Order.

#### 5. Counterfeit Parts / Material Prevention

Work consists of those commodities delivered under this contract that are the lowest level of separately identifiable items (e.g. articles, components, standard hardware, goods, raw materials and assemblies). "Counterfeit Work" means work that is, or contains, items misrepresented as having been designed and/or produced under an approved system or other acceptable method. The term also includes approved work that has reached a design life limit or has been damaged beyond possible repair, but is altered and misrepresented as acceptable.

Client shall only purchase products to be delivered or incorporated as work to buyer directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), OCM/OEM authorised distributor chain, Aftermarket Manufacturer, or Authorised Reclient. These products shall have verification that work is traceable to OCM/OEM; OCM/OEM authorised distributor chain, Aftermarket Manufacturer, or Authorised Reclient that identifies the

name and location of all the supply chain intermediaries from the part manufacturer to the direct source of the product for the client. Work can only be acquired from independent distributors or brokers in cases of diminishing material supply (DMS) or obsolescence and shall be subjected to a screening process appropriate to the commodity in accordance with the Counterfeit Parts / Material Prevention and Control Plan.

If traceability is not obtainable, written notice shall be provided to the Supplier Quality Engineer and Buyer prior to delivery with records of evidentiary tests and inspections performed and conformance of the product to specified acceptance criteria that ensures verification activities taken to assure authenticity. Written notice is not required for raw material and standard hardware purchased from independent distributors or brokers, but products must be able to provide commodity level traceability to the Original Manufacturer.

Client shall notify Supplier Quality Engineer and Buyer with the pertinent facts if Client becomes aware or suspects that it has furnished Counterfeit Work. Client shall provide to Supplier Quality Engineer and Buyer, upon request, the supply chain traceability to an Original Manufacturer or authorised distributor chain that identifies the name and location of all the supply chain intermediaries from the part manufacturer to the direct source of the product for the client.

#### **6. Obsolescence**

When supplier has knowledge that any material or hardware item to be provided in performance of this purchase order is obsolete, is marked for impending obsolescence, or has an established end of production date, supplier shall immediately give formal written notice, including all relevant information to Toolcraft Pty Ltd.

Such notice shall include, but not be limited to:

1. Complete details of which parts are affected
2. Date of obsolescence
3. End of production date
4. Reason for obsolescence
5. Pricing and availability of last-time buy
6. Supplier's recommendation for replacement parts inclusive of known impacts to performance, pricing, availability and lead time.