

**SIA ABRASIVES AUSTRALIA PTY LTD ABN 16 005 616 302**  
of 1555 Centre Road, Clayton, VIC 3168

(referred to as the "Company")



**1. Application Of Terms, Quotations And Orders**

- 1.1 These Terms, in their present form or as varied in accordance with clause 1.6, together with:
- (a) any accepted Application for Opening of a Credit Account form;
  - (b) the Supplementary Terms of Delivery and Sale for New Zealand (if applicable);
  - (c) all Quotations (as defined in clause 1.2) accepted in accordance with clause 1.3;
  - (d) the EDI Trading Terms (if applicable);
  - (e) all product warranties provided by the Company;
  - (f) all accepted orders placed by a buyer with the Company for the Company's products or services (**Buyer**); and
  - (g) any variation to a document listed in (a) to (f) above, agreed to in writing by the Buyer and the Company,

constitute the contract (**Contract**) between the Company and the Buyer pursuant to which the Company makes all supplies of the Company's products and services to the Buyer. The application of these Terms to any order or other arrangement by the Company to supply products or services to the Buyer may only be varied by agreement in writing between the Buyer and the Company.

- 1.2 Offers, estimates or quotations (**Quotations**) given by the Company are, except to the extent otherwise stated in such document, subject to these Terms.

- 1.3 Any Quotation from the Company:

- (a) will not bind the Company or form part of the Contract unless given, or subsequently confirmed, in writing by it and accepted by the Buyer through placement of an order;
- (b) shall remain open for acceptance for a maximum period of 30 days, unless otherwise specified in the Quotation; and
- (c) may be subject to alteration at any time prior to the Company accepting an order from the Buyer.

- 1.4 An order placed by the Buyer will only form part of the Contract when it has been received and accepted by the Company. Acceptance by the Company of any order issued by the Buyer may be in writing or by the Company delivering to the Buyer the products or services which are the subject of an order. However, any terms and conditions contained in any order or other document issued by the Buyer will not form part of the Contract unless they are expressly signed and accepted by the Company's authorised representative.

- 1.5 Orders once accepted cannot be cancelled or varied without the Company's written consent. The Company reserves the right to correct any significant errors or omissions in its Quotations, order confirmations or invoices.

- 1.6 Except as otherwise agreed in writing, the Company may amend these Terms at any time with notice in relation to future orders placed by the Buyer or with notice prior to acceptance of orders which have already been placed on the Company, in which latter case the Buyer may decide to withdraw its order if it considers such variation would cause detriment to it.

- 1.7 Supply of products or services by the Company does not create any obligation on the Company to supply the products or services to the Buyer on a continuing basis or at any time in the future. Further, except as otherwise agreed in writing, the Company reserves the right at any time and without notice to impose a limit on the amount of products the Buyer may purchase.

- 1.8 The Company may, in its discretion, agree that orders may be given by the Buyer to the Company by electronic data interchange (**EDI**). If the Company does so, then (except to the extent otherwise agreed), any EDI transaction will also be governed by EDI.

- 1.9

**2. Prices**

- 2.1 Except where an order is placed for products or services under a valid and binding Quotation under clause 1.3 or to the extent otherwise agreed, the Company reserves the right at any time prior to accepting an order to vary with notice to the Buyer the price of the products or services.

- 2.2 Notwithstanding that an order is placed under a valid and binding Quotation, except to the extent otherwise stated in the Quotation, the Company reserves the right prior to acceptance of such order and with notice to the Buyer to add to the quoted price any additional cost incurred by the Company as a result of:

- (a) any agreed change to order quantities;
- (b) any relevant increase in exchange rates, costs of labour, parts, materials and other inputs, including, without limitation, energy and other overheads; and
- (c) in the case where the Buyer has provided any goods, tooling or materials for the purpose of the Company providing the goods or services (**Buyer's Materials**) or any specific instructions or specifications for the products or services, any agreed variation to these.

- 2.3 Unless otherwise stated in the Quotation, prices quoted for export are FCA (Incoterms 2010) dispatch location nominated by the Company and do not include freight costs, insurance, import duties or government taxes in the destination country, or costs of delivery within

the destination country, which are the sole responsibility of the Buyer. In addition, unless otherwise agreed, the Buyer assumes the responsibility and costs of export formalities.

- 2.4 Each amount quoted by the Company is the goods and services tax (**GST**) exclusive amount, unless specifically described as 'GST inclusive'.

**3. GST**

- 3.1 Words or expressions used in this clause 3 which are defined in the *A New Tax System, (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

- 3.2 Despite any other clause in these Terms, if a party makes a supply (**Supplier**) under or in connection with the Contract on which GST is payable (not being a supply the consideration for which is specifically described as 'GST inclusive'):

- (a) the consideration payable or to be provided for that supply but for the application of this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST exclusive consideration multiplied by the prevailing rate of GST (**GST Amount**); and
- (b) subject to clauses 3.3 and 19.2, the GST Amount must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

- 3.3 The Recipient need not pay the GST Amount in respect of a taxable supply made under or in connection with the Contract until the Supplier has given the Recipient a tax invoice in respect of that taxable supply.

**4. Terms of Payment**

- 4.1 Unless otherwise agreed in writing (by the Buyer submitting an Application for Opening of a Credit Account form which is accepted by the Company) or otherwise stated in any Quotation issued by the Company, payment must be made by the Buyer without set off or deduction by electronic funds transfer to a bank account nominated by the Company no later than the date of delivery of the products (**Due Date**). In all instances, the Company reserves the right to make delivery of the products conditional upon contemporaneous payment, payment of progress claims or, subject to Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and the corresponding provisions of the applicable state Fair Trading Acts (**Australian Consumer Law**), on pre-payment of the price.

- 4.2 If the Buyer fails to make a payment by the Due Date, the Company may:

- (a) charge interest on the overdue account at the rate fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic);
- (b) refuse to make any further deliveries under the Contract until the amount due has been paid; and/or
- (c) if the amount due remains unpaid after providing 7 days notice to the Buyer of such breach and an opportunity to rectify the breach, treat the failure of the Buyer to make payments as a repudiation of the Contract by the Buyer. Such repudiation shall entitle the Company to elect, without prejudice to any other rights of the Company, to terminate the Contract in whole or in part (including any order or part of an order) and, in either case, to recover damages for the breach of the Contract.

- 4.3 The Company may allocate all amounts received by the Buyer in any manner it determines including any manner required to preserve any personal property security interest in the products.

**5. Delivery**

- 5.1 In the case of supply of products, delivery shall be:

- (a) ex works (Incoterms 2010) at the premises nominated by the Company, or
- (b) in the case of export by the Company, FCA (Incoterms 2010) to the dispatch location nominated by the Company, unless the parties agree in writing to alternative delivery arrangements. If the Buyer fails or refuses, or indicates to the Company that it will fail or refuse, to take or accept delivery, then the products shall be deemed to have been delivered on the date when the Company sought to deliver the products.

- 5.2 In the case of supply of services, delivery shall be deemed to have occurred on completion by the Company of the agreed services.

- 5.3 The completion or delivery dates specified in any Quotation are estimates only. The Company is not bound by any completion or delivery dates specified in a Quotation.

- 5.4 The Company will endeavour to effect delivery in any time stated (if a time is stated in writing) and otherwise within a reasonable period. The Company will endeavour to deliver all products the subject of an order at the same time. However, where this is not possible, in order to minimise any detriment that may be caused to the Buyer, the Company will deliver products to the Buyer by instalments within a reasonable period of time.

- 5.5 If, at the Buyer's request, delivery of any products is delayed after notification by the Company to the Buyer that the products are ready for delivery, the Buyer agrees to pay any reasonable storage costs incurred or to be incurred by the Company.
- 5.6 If the Company fails to deliver in accordance with clause 5.4 by reason of:
- inability to obtain supplies of the products (where it is not the manufacturer) or materials or parts from approved sources;
  - import or export restrictions;
  - any strike or combination of worker, shortage of labour or lockout;
  - any fault of the Buyer; or
  - any other event or circumstance beyond the reasonable control of the Company,
- the Company may at its option cancel any order, the Contract or any unfulfilled part of an order or extend the time for its performance or completion by the time lost because of the event preventing or delaying delivery. The Company shall not be liable for delay in delivery of the products or services as a result of any of the causes set out in this clause.
- 5.7 In the case of delivery of products with respect to which it has been agreed to use returnable packaging, packing materials or pallets, the Buyer must return to the Company such items, failing which the Buyer may be charged for their replacement cost.
- 6. Notification of Faults and Returns**
- 6.1 The Buyer must examine the products supplied by the Company on delivery or collection.
- 6.2 The Buyer shall notify the Company of any shortfall in the number of products to be supplied under an order within 48 hours after receipt of the products (unless the products are delivered by instalment in accordance with clause 5.4). Failure to so notify the Company shall result in the loss of any rights the Buyer may have against the Company for the shortage.
- 6.3 The Buyer shall within 7 days of each delivery of products give full particulars in writing to the Company of any matter or thing in relation to any delivery which is not in accordance with the terms of any order (other than any shortfall to which clause 6.2 applies). Failing such notice the Buyer shall be bound to pay for the products and, except where the Buyer is a consumer as that term is defined in the Australian Consumer Law (**Consumer**), then the products shall be deemed in all respects to have complied with such order.
- 6.4 Any products that are not defective, not in breach of a consumer guarantee (as that term is used in the Australian Consumer Law) (**Consumer Guarantee**) or not supplied in error and which otherwise comply with the order may not be returned to the Company by the Buyer for credit, except where agreed by the Company in writing at its discretion. If the Company agrees to accept the return of any such products, the Buyer agrees that the products must be new, undamaged, in a saleable condition and not shopped and that the Company may deduct any reasonable costs it has incurred in processing the return.
- 7. Risk**
- 7.1 If products are delivered ex works, risk passes at the point of delivery (Incoterms 2010). If it is agreed that products be delivered other than ex works, the products shall be at the Buyer's risk upon the Buyer or its agent or carrier taking physical possession of the products.
- 7.2 The Company shall not be liable for any such loss, deterioration or damage caused to the products after risk passing.
- 8. Property**
- 8.1 Except where otherwise agreed, any tooling acquired, created or commissioned by the Company for the purpose of supplying any products to the Buyer and any other signage, sample product, equipment or other goods loaned to the Buyer by the Company from time to time will remain the property of the Company.
- 8.2 Title in products supplied by the Company will only pass to the Buyer upon the Buyer paying, in cleared funds, to the Company the full purchase price of all products supplied to the Buyer by the Company under the order and any other sums outstanding from the Buyer to the Company under the Contract.
- 8.3 If the Buyer:
- defaults in paying any sums due to the Company under any order; or
  - is an individual and becomes insolvent, bankrupt, commits any act of bankruptcy, compounds with or enters into any compromise or arrangement with its creditors or if a mortgagee takes possession of any of the Buyer's assets; or
  - is a company and has a provisional liquidator, liquidator, receiver, receiver and manager, trustee for creditors or in bankruptcy, administrator or analogous person appointed to it or its property, or if a mortgagee takes possession of any of the Buyer's assets; or
  - is otherwise unable to pay its debts as and when they fall due, any amount to become due under the Contract shall become immediately due and payable and the Buyer shall not sell or otherwise deal with any products in its possession and, upon the Company's request, the Buyer will return the products to the Company immediately.
- 8.4 Subject to clause 8.3, the Buyer is authorised to sell the products in the ordinary course of business and shall hold the proceeds of any sales separately from its own moneys and the Company has a security interest in those proceeds, provided that such authority may be revoked by notice from the Company at any time if the Company considers the creditworthiness of the Buyer to be unsatisfactory or if the Buyer is in default in the performance of its obligations under the Contract or any other agreement between the Company or any related body corporate of the Company (**Related Company**) and the Buyer. Such authority shall be deemed automatically revoked if the Buyer satisfies clause 8.3.
- 8.5 The Buyer shall, if required by the Company, store separately those products in respect of which title is retained by the Company and shall clearly identify such products as the property of the Company. The Company shall, upon revoking its authority contained in clause 8.4 or such authority being automatically revoked under clause 8.3, have the irrevocable right to enter upon the premises where the products are situated, or where the Company suspects the products are situated, without committing a trespass and take possession of and remove the products (or in accordance with clause 8.6, any products owned by the Buyer into which they become incorporated) even though they may have been attached to other goods or land which is not the property of the Buyer, and to use the name of the Buyer and to act on its behalf to recover possession of the Company's products. The Buyer will remain liable to the Company for the price of any damaged, used, incomplete, broken or obsolete products that the Company determines have no commercial value or are unable to be resold and for the difference in the original purchase price agreed by the Buyer from actual resale value. The Company may also require the Buyer to pay the Company's reasonable costs in exercising any of its rights under this clause 8.5 together with any related costs such as transportation and repackaging. The Buyer indemnifies the Company from and against all loss suffered or incurred by the Company as a result of exercising its rights under this clause.
- 8.6 If the products in which title is held by the Company are to become fixture or fittings of any real property owned by the Buyer or any other person, the Buyer acknowledges, or where the Buyer does not own the real property to which the products are to be affixed, shall procure the owner to acknowledge, and in either case shall procure any mortgagee of such real property to acknowledge that, notwithstanding such incorporation, such products remain the property of the Company until title in the products passes to the Buyer, and that all rights of the Company set out in these Terms remain.
- 9. Personal Property Securities Register**
- 9.1 The Buyer acknowledges and agrees that:
- the Contract constitutes a security agreement;
  - in accordance with clause 8 of these Terms, it grants to the Company a security interest (as defined in the *Personal Property Securities Act 2009* (Cth) (**PPSA**) in all products supplied by the Company and the proceeds thereof as security for payment of the purchase price of the products and services and all other moneys payable to the Company by the Buyer;
  - the Company may apply to register and register any security interests created under the Contract on public registers including the Personal Property Securities Register (as defined in the *PPSA*) (**PPSR**) at any time before or after delivery of the products by the Company;
  - the Company may use and/or disclose information provided by the Buyer to register any security interest (including but not limited to any arising under clause 8.2 and 8.4) on public registers including the PPSR. This may include disclosure of information of the Buyer that is not publicly available (including the existence of or contents of the Contract). Such disclosure is only authorised to the extent necessary in connection with an exercise of rights under the Contract or a transfer or other dealing with rights or obligations under the Contract, or to officers, employees, agent, contractors, legal and other advisors and auditors of the Company, or in accordance with the consent of the Buyer (not to be unreasonably withheld) or as required by any law (other than section 275(1) of the *PPSA* unless section 275(7) of the *PPSA* applies) or as required by any stock exchange or rating agency;
  - it will do anything that the Company requires and will promptly give the Company all assistance and information (including signing any documents) as the Company requests to ensure that the Company has a perfected first ranking security interest in all products supplied by the Company to the Buyer (and the proceeds thereof);
  - the Company need not give the Buyer any notice under the *PPSA* (including a notice of a verification statement) unless the notice is required by the *PPSA* and cannot be excluded;
  - if Chapter 4 of the *PPSA* would otherwise apply to the enforcement of the security interest created under this Contract, the following provisions of the *PPSA* do not apply: section 95 (notice of removal of accession to the extent that it requires the Company to give a notice to the Buyer); subsection 121(4) (enforcement of liquid assets); section 130 (notice of disposal to the extent that it requires the Company to give a notice to the Buyer); paragraph 132(3)(d) (contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement);
  - it will not change its name without notifying the Company in writing of the Buyer's intention to change its name at least 10 business days prior to doing so; and
  - it must indemnify the Company for any costs incurred by the Company under this clause.
- 9.2 The Buyer and the Company agree that, without limiting the rights of the Company under clause 8.3, they will not disclose any of the information set out in section 275(1) of the *PPSA* in relation to any security interest created under the Contract to any person (except that the Company may do so where required due to the operation of section 275(7) of the *PPSA*).

- 10. Insurance**
- 10.1 Until property in the products passes to the Buyer, the Buyer shall keep the products insured, with the Company noted as an additional insured and will produce upon demand evidence of the existence of such insurance as the Company may require. If the Buyer defaults in the performance of its obligations under this clause 10, the Company may insure the products and the cost of effecting such insurance shall be payable by the Buyer on demand.
- 10.2 If any products are damaged or destroyed prior to property in them passing to the Buyer, the Company shall be entitled, without prejudice to any of its rights or remedies under these Terms, to receive all insurance proceeds which are payable in respect thereof (whether or not the purchase price of such products has become payable under these Terms) and the production of these Terms by the Company shall be sufficient evidence of the Company's right to receive payment of such insurance proceeds without the need for further enquiry by any person dealing with the Company. Any such insurance proceeds shall be applied by the Company as follows:
- first, in payment of the purchase price of the products which are damaged or destroyed, if unpaid;
  - secondly, in payment of the outstanding purchase price of any other products supplied to the Buyer by the Company, whether under these Terms or otherwise; and
  - thirdly, in payment of any other sums payable to the Company by the Buyer whether under these Terms or otherwise.
- 11. Intellectual Property**
- 11.1 All intellectual property rights in or relating to products or services supplied by the Company, including in relation to the development, manufacture, use, operation, repair or maintenance of the products, and in or in relation to any Company-licensed, commissioned or created tooling, materials, drawings, samples, reports, work results and other documents, remains at all times the sole and exclusive property of the Company or its licensor.
- 11.2 Except where the Buyer is a Consumer and the claim arises as a result of the Company's breach of a Consumer Guarantee to the Buyer, the Company is not liable for any claims arising from an actual or alleged infringement of a third party's intellectual property rights; where such claim arises due to the Company agreeing to supply the product or services in accordance with Buyer's specifications or using Buyer's Materials; where the actual or alleged infringement of the intellectual property rights is due to use of the Company's product in conjunction with another product not supplied by the Company; where the products or work results produced by the Company in providing the services are used in a way which could not have been foreseen by the Company, or (in the case of patents) unless at least one intellectual property right from the property right family has been published under the European Patent Office or in one of the following countries: Germany, France, Great Britain, Austria or the USA.
- 11.3 If the Company supplies any products or services in accordance with the Buyer's specifications or using Buyer's Materials, the Buyer shall indemnify the Company from and against all actions, claims, demands, costs, expenses and liabilities arising in connection with any alleged or actual infringement of the intellectual property rights of a third party.
- 11.4 The Buyer shall not use any trademark owned or licensed by the Company, or any substantially identical or misleadingly similar words, in a company name, business name, domain name or email address.
- 11.5 The Buyer shall not apply to register a company name, business name or domain name which incorporates any trademark owned or licensed by the Company, or any substantially identical or misleadingly similar words.
- 11.6 The Buyer shall not use any logo, mark or any other promotional material owned by or licensed to the Company in any promotional materials without the prior written consent of the Company, and only then subject to the Company's directions in relation to any use of the trademark as amended from time to time.
- 11.7 The Buyer shall not, and shall ensure that its officers, employees or agents do not:
- disparage the Company or any of its trademarks or products or services; or
  - do anything which the Buyer should realise is likely to damage the reputation of the Company or any of its trademarks or products or services.
- 12. Express Warranties**
- 12.1 This clause 12 will not apply to a Consumer. Any warranty against defects (as this term is defined under the Australian Consumer Law) which is offered by the Company to a Consumer will be provided in the product warranty (if any) separately supplied with the product, which is in addition to (and not in limitation of) any rights a Consumer may have under the Australian Consumer Law.
- 12.2 This clause does not apply in respect of any consumable or accessory products (if any) sold by the Company. This clause does not apply to supplies of the kind referred to in clause 15, except to the extent specifically stated in that clause.
- 12.3 The Company warrants to the Buyer that products or services sold by the Company to the Buyer for use or resale in Australia or New Zealand (or other country as may be agreed by the Company in writing for the purpose of this warranty) conform to the agreed specifications (subject to clause 12.4) and are free from material faults and defects (subject to clause 12.5).
- 12.4 With respect to products developed or manufactured by the Company for a particular Buyer's requirements and which are not the subject of published product specifications issued by the Company, the Company does not warrant measurements, dimensions, weights, and drawings provided for products but only that the products will conform to agreed tolerance standards.
- 12.5 The warranty that products are free from material faults and defects will not apply to the extent any defect cannot be discovered due to the state of scientific or technical knowledge or has been disclosed as a feature or limitation of the products in any product specifications published by the Company.
- 12.6 With the exception of any products that may have been sold by the Company to the Buyer by description or sample, the Company does not warrant that the products shall conform to that description or sample and products shall be accepted by the Buyer even though alterations in design or construction have been introduced by the Company between the date of the description or provision of the sample and delivery of the product to the Buyer.
- 12.7 The Company assumes a warranty of fitness for a particular purpose with respect to a product supplied by it only if such particular purpose has been expressly stated in writing by the Buyer, and the Company has expressly accepted a warranty of fitness for such purpose.
- 12.8 The duration (and any other details) of the express warranties referred to in this clause shall be agreed upon a product-specific basis. Unless otherwise agreed by the Company in writing, the express warranties in this clause shall apply:
- in the case of products: as specified in the Quotation for the supply of such product to the Buyer, or if no warranty period is so specified, for a period of 6 months, from the date of delivery of the products to the Buyer. However, in no case shall these express warranties to the Buyer extend beyond the date the Buyer sells or otherwise disposes of the product; or
  - in the case of services, for a period of 6 months after delivery of the services.
- 12.9 Claims under the express warranties provided under this clause 12 must be made with the Company's Service Centre or in writing to the Company within 7 days of such claim arising. Repair or replacement shall not extend nor renew the warranty period.
- 12.10 The express warranties in relation to products under this clause 12 shall not apply to a defect in the product to the extent to which it arises:
- due to storage, handling or installation of the products otherwise than in accordance with instructions provided for the products by the Company or without reasonable care;
  - due to operation, use or maintenance of the products otherwise than in accordance with instructions provided for the products by the Company or without reasonable care;
  - due to repairs, alterations or modifications to the products which have been performed by a third party, or due to the use of any spare parts not manufactured, sold or approved by the Company in connection with repairs, alterations or modifications of the products, which occurred without authorisation of the Company;
  - due to accidental damage or to use of the products for a purpose or in environmental conditions for which the products were not designed or sold or use of the product outside the specified or normal operating ranges for such products;
  - as a result of changes which occur in the condition or operational qualities of the products due to climate or other environmental influence, foreign material contamination or water entry;
  - from normal wear and tear or when replacement or repair of parts would be part of normal maintenance or service of the products (such as in the case of spark plugs, lenses, globes and glassware, bushes, bearings, drive assemblies, ignition contact sets, caps, rotors, condensers, brushes, fuses and similar parts) or where the damage is only to surface coating, varnish and enamel; or
  - from, or is attributable to, Buyer's Materials or Buyer's specifications or instructions for the products or services,
- nor will the express warranties in relation to products under this clause 12 apply in cases where the products suffer damage caused by continued use of the products after it is known they are defective. If requested by the Company, the Buyer shall return to the Company any products claimed to be defective under clause 12 or 13 of these Terms. If the products are found to be defective, the Company will bear the reasonable expenses of the Buyer in making the warranty claim, including the reasonable cost of transport for returning the defective products to the Company.
- 13. Product Recall**
- 13.1 The Buyer agrees to inform the Company as soon as possible if it believes that any product supplied by the Company may be unsafe or hazardous or does not conform, in whole or in part, with the technical specifications (if any) provided for in an order or other mandatory specifications imposed by law (**Non Conforming Product**). The Buyer will also notify the Company as soon as possible after it has been informed of incidents, accidents, or property damage allegedly caused by Non-Conforming Products.
- 13.2 The Buyer and the Company acknowledge and agree that Non-Conforming Products may need to be recalled. Subject to any applicable law, the Buyer and the Company shall consult with each other in respect to:
- a product recall prior to instituting any recall campaign, in particular any campaign in relation to which the Buyer may seek reimbursement from the Company under this clause 13; and
  - any response to inquiries from any Federal or State agency relating to the Non-Conforming Products.
- 13.3 Each of the parties will cooperate with, and provide reasonable assistance to, the other party in investigating any allegation(s) that a product is a Non-Conforming Product. If requested, the Buyer shall provide to the Company all relevant information available to it regarding an alleged Non-Conforming Product including reports, tests witness statements and, where possible, the Non Conforming Product in

- question for the purpose of inspection and testing. No party is required to disclose material or documents which attract legal professional privilege.
- 13.4 In the event of a recall campaign, the Company shall negotiate a fair and mutually acceptable reimbursement for all direct recall related expenses in respect of the Non Conforming Products. This is subject to clause 14 and on the understanding that the portion of the expenses to be borne by the Company shall be proportional to the degree to which the nonconformity of the products sold by the Company caused the recall.
- 14. Indemnity and Exclusion of Liability**
- 14.1 Except only for those rights and remedies that the Buyer has in respect of the products and services under the Australian Consumer Law which cannot lawfully be excluded, restricted or modified, all warranties, conditions and guarantees, whether statutory or otherwise, are excluded in relation to the products and services.
- 14.2 Subject to clause 14.3, the Company's liability to the Buyer in respect of all claims, actions, demands, proceedings, liabilities, damages, amounts, costs and expenses arising, paid, suffered or incurred by the Buyer (directly or indirectly) as a result of or in connection with a negligent act or omission of the Company, any breach or non-performance of any express or implied obligation of the Company under these Terms or in any way related to the products or services or information or advice supplied in respect of the products and services shall be limited, at the Company's option, in the case of the products (or parts thereof) to the repair or replacement of the products (or the parts) or the supply of equivalent products (or parts) or the payment of the cost of having the products (or parts) repaired or replaced or having equivalent products (or parts) supplied and, in the case of services, to supplying the services again or paying the cost of having the services supplied again. For the avoidance of doubt, subject to clause 14.3, the Company excludes any liability for legal costs and disbursements on a solicitor and own client basis and, without limitation, any indirect or consequential expense, loss or damage, loss of profits, revenue, use, expectation or opportunity, wasted expenditure, lost production or similar losses suffered by the Buyer under or in connection with these Terms.
- 14.3 If the Buyer is a Consumer, the liability of the Company will not be limited in the way set out in clause 14.2 if it is not 'fair and reasonable' for the Company to rely on such limitations in accordance with sections 64A(3) and (4) of the Australian Consumer Law, the products and services supplied are goods or services 'of a kind ordinarily acquired for personal, domestic or household use or consumption' as that expression is used in section 3 of the Australian Consumer Law or in relation to any Consumer Guarantee pursuant to sections 51, 52 and 53 of the Australian Consumer Law.
- 14.4 Insofar as any breach of an express warranty under clause 12 is concerned, the Company shall also repair or replace any other product (or part) supplied by the Company damaged as a result of the defective product.
- 15. Third Party Products On-Sold By The Company**
- 15.1 Subject to any rights a Consumer may have under the Australian Consumer Law, where the products sold to the Buyer by the Company under these Terms are not manufactured by the Company nor are sold under a name, brand or mark under which the Company carries on business:
- the products are as described on the order;
  - all specifications, drawings, and particulars of weights and dimensions submitted to the Buyer, whether contained in catalogues, price lists or other advertising matter, are approximate only and do not form part of the Contract or form part of the description applied to the products;
  - the Company shall not be liable for any alteration or variation in the products from such published specifications which are made available with respect to the products;
  - with the exception of clauses 12.6 and 12.7, clause 12 of these Terms does not apply; and
  - the Company agrees to assign to the Buyer, on its request, the benefit of any warranty that the manufacturer has granted to the Company under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.
- 16. Export Control and Restricted Products**
- 16.1 The sale, resale or other disposition of products and any related technology or documentation are subject to the export control laws, regulations and orders of Australia and may be subject to the export and/or import control laws and regulations of other countries. The Buyer agrees to comply with all such laws, regulations and orders and acknowledges that it shall not directly or indirectly export any products to any country to which such export or transmission is restricted or prohibited. The Buyer acknowledges its responsibility to obtain any license to export, re-export or import as may be required.
- 16.2 The Company shall not be liable for any loss or damage arising from controls referred to in clause 16.1 or any other restrictions imposed on the resale or use of the products by other legislation.
- 16.3 If the manufacture or use or sale of the products shall be forbidden or restricted by any competent government authority, any costs or expenses incurred by the Company in connection with any contract for manufacture, use or sale shall be paid by the Buyer.
- 17. Termination**
- 17.1 The Company may terminate or suspend the Contract (or any part thereof, including any order or part of any order) if the Buyer is in breach of:
- the Contract, and the Buyer remains in breach after receiving 7 days notice from the Company of such breach and the opportunity to rectify the breach;
  - any other agreement with the Company or a Related Company, and the Buyer remains in breach after receiving 7 days notice from the Company of such breach and the opportunity to rectify the breach; or
  - in the event a default is triggered under clause 8.3(b) to (d).
- 17.2 The Buyer must, and warrants that it will:
- comply with all applicable laws in relation to the conduct of its business including laws relating to bribery and corruption;
  - ensure that its actions or omissions do not cause the Company to be in breach of any applicable laws; and
  - immediately notify the Company of any breach of this clause.
- 17.3 The Company may, without liability to the Buyer and in addition to its rights pursuant to clause 17.1, immediately terminate or suspend the Contract and any outstanding orders if the Buyer or any of its employees or representatives:
- are charged with any criminal offence in relation to bribery or corruption; or
  - act in a manner which, in the Company's reasonable opinion, could bring the Company into disrepute; or
  - act dishonestly, fraudulently or illegally.
- 18. Confidentiality of Company Information**
- 18.1 The Buyer agrees to keep confidential the Company's financial, technological (including designs, drawings, specifications, technical handbooks), strategic, financial and business information, disclosed in the course of, or arising from, the Contract (**Information**).
- 18.2 All Information remains the property of the Company and may only be used by the Buyer in fulfilling its rights and obligations under the Contract. Otherwise, no Information may be disclosed to any third party without the Company's prior written consent.
- 18.3 The Buyer agrees to effect and maintain adequate security measures to safeguard the Information from access or use by any unauthorised person and not to disclose any terms of the Contract or Information except where disclosure is necessary to comply with the Contract or any other agreement between the parties, or if the disclosure is required by law.
- 18.4 The Buyer must, on becoming aware of any breach of confidentiality, immediately inform the Company, investigate the breach and report to the Company as to the outcome of the investigation.
- 19. Set Off**
- 19.1 The parties agree that the account between the Company and the Buyer is a running account.
- 19.2 Where any amount is payable by the Company to the Buyer under the Contract, including an amount owing by way of rebate, the Company may set such amount off against any amount owed to the Company or to a Related Company by the Buyer, and continue to do so until such time as the amount outstanding from the Buyer has been paid in full.
- 20. General**
- 20.1 All the original rights, powers, exemptions and remedies of the Company shall remain in full force notwithstanding any neglect, forbearance or delay in the enforcement thereof. The Company shall not be deemed to have waived any condition unless such waiver shall be in writing under signature of the Company or an authorised officer thereof and any such waiver, unless the contrary shall be expressly stated, shall apply to and operate only in a particular transaction, dealing or matter.
- 20.2 Any provision of these Terms will be read down to the extent necessary to prevent that provision or these Terms being invalid, voidable or unenforceable in the circumstances.
- 20.3 The Buyer must not assign or subcontract all or any of its rights or obligations under the Contract without the prior written consent of the Company.
- 20.4 A notice to be given by a party to the other party under the Contract must be in writing, directed to the party's address as specified in the Contract (or to such other address notified in writing by the receiving party); and left at or sent by prepaid registered post or hand delivery to that address. A notice will be deemed to be given: (i) on the day of delivery; (ii) 3 days after the date of posting by prepaid registered post if the Buyer is located in Australia; or (iii) 14 days after the date of posting by prepaid registered post if the Buyer is located outside Australia, as the case may be.
- 21. Governing Law**
- 21.1 The Contract shall be deemed to have been entered into in the State of Victoria, Australia and shall be construed, enforced and performed in accordance with the laws of that State. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria.
- 21.2 The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Contract.
- 22. New Zealand Provisions**
- In the case of products or services supplied by the Company in New Zealand, these Terms are varied and/or supplemented in accordance with the "Supplementary Terms of Delivery and Sale for New Zealand".