



# enresco

A division of INTEGRATED AUTOMATION Pty Ltd

## STANDARD TERMS AND CONDITIONS OF SALE

( Version 2.03 )

### 1 DEFINITIONS

"Supplier"	"Enresco" a division of Integrated Automation Pty Ltd ABN 26 070 137 334 of 164 Victoria Street, North Geelong, 3215, Victoria, AUSTRALIA.
"Buyer"	a person, a business, a company or a party to any contractual arrangement with Supplier, subject to these terms and conditions.
"Quotation"	the offer to Supply in the form of a document referring to these terms and conditions or a record of conversation offering to Supply.
"Order"	the purchase order, verbal quotation of order number, or other offer to purchase including a letter of intent to the extent that work has been completed and/or obligations entered into in reliance upon the same.
"Contract"	the contract made between Supplier and the Buyer for Supplies as constituted by the Buyer's unconditional acceptance of the Quotation, the Supplier's unconditional acceptance of the Order, the receipt by the Supplier of the Buyer's deposit (if any), or as it may subsequently be varied by agreement in writing.
"Supply(ies)"	the supply of Products, Systems, Licences, or the provision of Services to the Buyer.
"Products"	all hardware, firmware and software media specified in the Quotation.
"Services"	work including, without limitation, any advice for, and/or the design, programming and commissioning of or for a control system; equipment start-up and configuration; application engineering; training; and an exchange or repair of Products.
"System"	the combination of interacting or interdependent Products and Intellectual Property assembled to carry out one or more functions when operated in accordance with defined operating procedures as described in the specifications included with quotation.
"Licence"	the grant by the copyright-holder of a licence to use Intellectual Property including, without limitation, software Products.
"Stock"	Products usually stocked in Supplier's warehouse or on-site store.
"Indent"	in connection with Products means those that are not Stock; in connection with Services, those that are not usually provided by application of the Supplier's own resources.
"Industrial Property"	patents, registered designs, copyrights, schematics, and trademarks.
"Intellectual Property"	software, graphics, standards, know-how, techniques, and Industrial Property.

"Information"	the knowledge and/or data which constitutes, is in or underlies (i) Intellectual Property; and (ii) techniques, knacks and know-how and the embodiments thereof including without limitation designs, drawings, publications, books, documents, manuals, software, firmware, and any reproductions, versions, adaptations, facsimiles, or encryptions thereof.
"Confidential Information"	any information of either party that has been marked or otherwise indicated as being held by or provided to either party in confidence including any information that might reasonably be presumed to be confidential to one or other party.
"CIP"	Supplier will pay Carriage and Insurance Paid to Buyer's nominated destination.
"Ex Works"	Supplier will make the Products available for collection by Supplier's nominated carrier.
"Manufacturer"	the manufacturer of the Products, the provider of the Services, the Licensor of the Licences, or the engineers of the System.

### 2 APPLICATION

- 2.1 These provisions are deemed to be incorporated into all Contracts and supersede all relevant terms and conditions of sale or supply previously issued by Supplier.
- 2.2 No Contract shall exist between Supplier and the Buyer except upon these provisions unless their exclusion or modification of one or more items of them is explicitly agreed to in writing by Supplier.
- 2.3 Any order placed by a Buyer on Supplier is deemed to be an order incorporating these provisions as those which govern the Contract to the exclusion of any terms and conditions of the Buyer's order.

### 3 PAYMENT & DEPOSITS

- 3.1 Payment is required in advance by cash, bank cheque, approved credit card or irrevocable direct deposit, unless the Supplier expressly agrees to payment on terms.
- 3.2 If the Supplier has agreed to receive payment on terms the Buyer shall pay the full amount of the Supplier's invoice (without any deduction retention or set-off) by the due date, unless a deposit or retention is specified in the Contract.
- 3.3 If any payment is not made when due, Supplier may, without liability to it, suspend the Contract pursuant to clause 10.3.
- 3.4 Supplier reserves the right to set a minimum invoice value.
- 3.5 Supplier may require Buyer to pay a non-refundable deposit for Systems and Indent Supplies.
- 3.6 Deposits for Systems and Services shall be treated as progress claims and shall be paid against a tax invoice for the amount of the deposit plus any GST.
- 3.7 Deposits for Products and Licences shall not give rise to a tax invoice, shall not exceed 10%, shall be treated as

security deposits and shall be applied by the Supplier to the outstanding invoice balance after all other payments have been received and applied to the relevant invoices or will be refunded to the extent to which they are in excess of the Supply invoices.

- 3.8 Buyer agrees that Supplier may apply any payment received, at its option and without limitation, to any overdue balance on the Buyer's account.

#### **4 INTEREST & SURCHARGES**

- 4.1 Payment made by credit card later than ten working days from the invoice date will incur a surcharge of 1.5% of the amount of the payment in the case of VISA or MASTERCARD and 3% in the case of AMERICAN EXPRESS.
- 4.2 Buyer hereby agrees to pay interest on overdue amounts at a rate of 2% per calendar month, such interest to be computed from the date a payment becomes overdue until payment of such monies is received in full.
- 4.3 Buyer agrees to pay any costs of collection including reasonable legal fees provided those costs relate to the collection of overdue monies.

#### **5 SCOPE OF SUPPLY**

- 5.1 The Scope of Supply shall be defined by the Quotation, the Engagement Agreement, and any documents referred to therein.
- 5.2 In the event that Supplies are made without a written Quotation the scope of supply shall be inferred from the records of conversations and meetings, related correspondence and shall be subject to clarification by the issuing of a written Quotation, Order Confirmation, or Supplier's Statement of Work at a later date.
- 5.3 The Buyer shall provide Supplier with the current controlled copy of any of its own documents referred to in any definition of scope.
- 5.4 The Buyer shall not be entitled to rely on any documents that it did not provide to Supplier before the Contract was made.

#### **6 BUYER SPECIFICATION**

- 6.1 Supplier does not warrant or indemnify and will not otherwise be liable for software, design, materials or construction criteria furnished or specified by Buyer and incorporated into Supplies, or for any thing made by or sourced from other manufacturers or vendors specified by Buyer.
- 6.2 Any warranty and/or indemnity applicable to such Buyer-specified things will be limited solely to the warranty and/or indemnity, if any, extended by the thing's Manufacturer.

#### **7 ACCEPTANCE**

- 7.1 Any Supplies are subject to the acceptance of the Buyer.
- 7.2 Liability for payment for Supplies delivered to but not accepted by the Buyer shall remain with the Buyer until such time as the Supplies are returned to Supplier in their original unmarked packaging and accepted by Supplier for credit or exchange.
- 7.3 Buyer's failure to accept Supplies shall not release it from assuming risk for any damage to or the destruction or loss of included Supplies whilst they (or any item of them) have not been returned to Supplier's premises.
- 7.4 Product damage shall not release the Buyer from assuming risk for any further damage, or the destruction or loss of

Supplies whilst they have not been returned to Supplier's premises.

- 7.5 Rejected Products must be returned at the Buyer's expense or via Supplier's nominated carrier. Supplier will not accept freight charged to the Supplier without prior authorisation.
- 7.6 Acceptance of a System shall occur on the date that the System meets the acceptance criteria set out in the Quotation or the agreed Specifications if they are developed subsequent to the Quotation.

#### **8 VARIATIONS**

- 8.1 Any changes to the Order required by the Buyer, including the availability of revised controlled documents, shall be subject to written acceptance by Supplier following written acceptance by the Buyer of the Supplier's notification of the impact on any relevant contract matter including but not limited to price, schedule, specification or delivery.
- 8.2 Supplier reserves the right to reject any change that it deems unsafe, technically inadvisable or inconsistent with established engineering or quality guidelines and standards or incompatible with Supplier's or Manufacturer's design or manufacturing capabilities.
- 8.3 Supplier reserves the right to substitute using the latest superseding revision or series or equivalent Product having comparable form, fit and function.

#### **9 PRICES**

- 9.1 Prices exclude Australian Goods and Services Tax which shall be added to all invoices unless Supply is made outside of Australia to a Buyer that is not an entity registered for goods and services tax in Australia.
- 9.2 Prices exclude local duties and taxes in foreign countries. The Buyer shall pay or reimburse to the Supplier any such charges.
- 9.3 Prices include standard packaging. Any special packaging shall be charged to Buyer.
- 9.4 Prices are valid for a period of thirty days from the date of the Quotation.

#### **10 DEFAULT, DELAYS, TERMINATION, CANCELLATION**

- 10.1 If Supplier is in material default of its obligations in the Contract, Buyer shall give Supplier written notice, and Supplier shall have ten (10) business days to begin action and ninety (90) days, (or longer if agreed to in writing) to rectify the default. If Supplier fails to rectify the default, Buyer may terminate the Contract to the extent Supplier is in default. Supplier's liability shall be limited to the Contract price of the terminated portion of the work and direct excess re-procurement costs incurred by Buyer to complete the System to a capability not exceeding that provided in the Specification, at a cost not exceeding an additional ten percent (10%) of the Contract price for the terminated portion of the work.
- 10.2 Buyer may terminate the Contract for convenience prior to Delivery by giving written notice to Supplier. Buyer shall pay Supplier for work performed prior to receipt of notice and reimbursement of additional costs for cancellation (including third-party commitments and reasonable profit and overhead) upon submission of Supplier's invoices. Buyer shall forfeit any amount paid as a deposit in addition to the other amounts liable to be paid under this clause.
- 10.3 If Buyer causes the delivery, installation or acceptance of the System to be delayed beyond the project schedule as

provided in the Quotation, or if Buyer materially fails to fulfil any condition of the terms of the Contract, Supplier may elect to withhold deliveries and suspend performance. If such delay or other non-fulfilment is not rectified by Buyer promptly upon notice, Supplier may cancel the Contract and Buyer shall pay Supplier its costs for cancellation (including third-party commitments and reasonable overhead and profit) upon submission of Supplier's invoices. Any delays incurred by Supplier caused by Buyer or by other contractors to Buyer will be cause for equitable adjustment in Price, Schedule, and other effected terms and conditions.

- 10.4 Any suspension by Supplier of performance pursuant to clauses 3.3 and 10.3 shall not be grounds for cancellation of the Contract by the Buyer.
- 10.5 If the Buyer commits any act of bankruptcy or is managed under any scheme of arrangement, receivership or liquidation Supplier may cancel any Contract without prejudice to its rights thereunder.

## 11 DISPUTES

- 11.1 The parties will attempt in good faith to promptly resolve any dispute by negotiations between representatives who have authority to settle the dispute.
- 11.2 Any dispute or difference whatsoever arising out of or in connection with this Contract, other than a dispute in relation to non-payment of a debt for undisputed Supplies or a dispute that both parties wish to first negotiate, shall be submitted to mediation in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Mediation and Conciliation Rules.'
- 11.3 If the dispute or difference is not settled within 30 days of the submission to mediation (unless such period is extended by agreement of the parties), it shall be submitted to arbitration in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Rules for the Conduct of Commercial Arbitrations'.
- 11.4 For disputes in which the quantum is less than \$20,000 arbitration shall take place using the submission of documents alone unless both parties agree otherwise.
- 11.5 Nothing in this clause shall prevent Supplier from seeking or enforcing default judgement for non-payment of a debt owed to it by the Buyer provided that no such action shall be taken in relation to a matter that is, at the same time, subject to mediation or arbitration.
- 11.6 These procedures are the exclusive procedures for the resolution of disputes between the parties.

## 12 SITE PREPARATION & RULES

- 12.1 Prices and schedules are contingent upon all sites being equipped with all necessary Buyer-furnished equipment and facilities and ready for commencement of field activities and any required Buyer fixtures or facilities being hazard free, structurally sound, and sufficient for mounting or installing the System and associated Supplies.
- 12.2 Unless otherwise agreed in writing, Buyer will provide unrestricted access, twenty - four (24) hours per day, seven (7) days per week, to the worksite and will provide or assist promptly with any required security clearances.
- 12.3 Supplier agrees to comply with all applicable posted site rules of Buyer unless inconsistent with the obligations set forth in the Contract. In addition, Supplier will comply with Buyer's site rules that have been provided in writing to Supplier and incorporated into the Contract.

## 13 DELIVERY

- 13.1 Delivery shall be made to the location nominated in the Contract using the carrier nominated in the Contract.
- 13.2 If the location has not been nominated then Delivery shall be made to the Buyer's usual delivery location.
- 13.3 If the carrier has not been nominated in the Contract then Delivery shall be made using Supplier's carrier.
- 13.4 Delivery shall incur charges (sometimes called "packaging and handling charges") on the following basis:-
- If Buyer nominates its own carrier on a "freight collect" basis then Delivery shall be made Ex Works; Buyer accepts full responsibility for all freight and insurance charges.
  - If Buyer nominates a carrier on a "freight paid" basis then Delivery shall be CIP (carriage and insurance paid) and the Supplier charge shall be 110% of the actual cost incurred by Supplier.
  - If Buyer does not nominate a carrier, delivery shall be CIP and Supplier shall use its own carrier and charge according to its current schedule of rates.
  - Notwithstanding the above, Supplier reserves the right to levy an inwards delivery charge to cover freight and insurance where it incurs such costs for imported or expedited Supplies
- 13.5 Delivery of any Supplies, including any contracted stage of Supply, shall be considered effected when Supplier can demonstrate that the Supplies have been:-
- Loaded on to Buyer's nominated carrier, or
  - Delivered to the Buyer's nominated delivery point, or
  - Placed into the custody of the Buyer's authorized representative, or
  - Accepted by the Buyer's authorized representative,
- as the case may be consistent with the nature of the particular Supplies, sub-section 13.4 and the Contract.
- 13.6 Lead times or delivery dates stated in a Quotation are estimates valid at the time of quotation only and are subject to confirmation at the time Supplier accepts Buyer's purchase order.
- 13.7 The Buyer shall not be relieved of any obligation to accept or pay for Supplies by reason of any delay in delivery dispatch or performance.
- 13.8 Unless the Contract specifies otherwise Supplier may deliver by way of instalments and each instalment shall be deemed to be a delivery under a separate contract.
- 13.9 Failure to deliver any instalment shall not entitle the Buyer to rescind or repudiate the Contract.

## 14 RETURN OF GOODS

- 14.1 The Customer may return Products for credit provided that:-
- Products are returned within thirty days of Delivery,
  - Products are in the same condition and unopened packaging as when originally delivered to Buyer,
  - Products are NOT Indent Products or Licences
  - Buyer pays to Supplier a restocking fee of not less than ten per centum of the invoice Price, and

- (e) Buyer pays all applicable freight charges including return freight to Supplier's vendor if required,

## 15 RISK, TITLE & LICENCE

- 15.1 Unless otherwise agreed in writing title and risk in Products Systems and Licences purchased shall pass to the Buyer upon Delivery.

## 16 FORCE MAJEURE

- 16.1 Supplier shall not be liable for any loss, damage or delay arising out of its failure (or that of its subcontractors) to achieve progress milestones, delivery or acceptance due to acts of God or causes beyond its reasonable control including without limitation, acts or omissions of the Buyer, acts of civil or military authority including delays in obtaining import or export licenses or clearances, fires, floods, strikes, epidemics, war, acts of terrorism, riots, delays in transportation, transport embargoes, or inability due to causes beyond its reasonable control to obtain necessary engineering talent, labour, materials, or manufacturing facilities.
- 16.2 In the event of such delay, the date for Delivery shall be extended for that length of time as may be reasonably necessary to allow for the delay.
- 16.3 If in the opinion of Supplier an event specified in clause 16.1 makes Supply practically impossible it shall permanently be relieved of any obligation to supply, without liability to the Buyer, upon Supplier giving written notice to the Buyer.

## 17 WARRANTY

- 17.1 In respect of Systems, Supplier warrants for the lesser period of eighteen months from Delivery or twelve months from start-up, that the System will perform as stated in the Contract; provided that the installation, adjustment, tuning, start-up, operating conditions and use of each System, including the Products embodied therein, is in accordance with any standards set forth in the Contract, Manufacturer or Supplier's published specifications, and applicable recommendations of Manufacturers.
- 17.2 In respect of Products, Supplier warrants for twelve months from Delivery, or such other time as is specified in the Manufacturer's Warranty, that the Products will be free of defects in design, material, fabrication and workmanship; provided that the operating conditions and use of the Products are in accordance with any standards set forth in the Manufacturer or Supplier's published specifications and applicable recommendations of Manufacturer;
- 17.3 In respect of Services, Supplier warrants for claims made within thirty days of Delivery that the Services shall be performed in a competent workmanlike manner conforming to standard industry practice.
- 17.4 In respect of Licences, unless otherwise provided in a licence agreement, Supplier warrants for a period of three months from the date of invoice that the Supplies will perform substantially in accordance with published or agreed specifications when used with the specified Products in the application for which the Supplies are intended.
- 17.5 Remedies under this warranty shall, to the extent permissible by law, be limited strictly to the replacement, repair, reinstatement, re-performance (of services), modification, pro-rata refund or pro-rata credit for the purchase price of the Supplies involved in accordance with section 68A of the Trade Practices Act.

- 17.6 The foregoing will be the exclusive remedies for any breach of warranty or breach of contract arising from warranted non-conforming services.

- 17.7 On-site warranty services shall not include removal or reinstallation costs.

- 17.8 This warranty does not provide for damage to the Products or Systems that can reasonably be determined to be due to misuse, neglect, improper installation, improper operation, improper maintenance, repair, alteration or modification; accident; or unusual deterioration or degradation due to the physical or electromagnetic environment.

- 17.9 In no event, and to the extent permissible by law, shall Supplier, be liable for penalties, indemnification of Buyer's costs, damages or expenses, or for indirect or consequential damages under any circumstance..

- 17.10 The above warranties are in lieu of all other warranties and conditions, whether expressed, implied or statutory, including implied warranties of merchantability or fitness for a particular use.

- 17.11 If defective performance is not due to warranted defects in the Supplies, the Buyer shall compensate the Supplier for reasonable warranty related expenses incurred and services provided in good faith.

## 18 DISCLAIMER & LIMITATION OF LIABILITY

- 18.1 To the fullest extent permitted by applicable law, neither party shall be liable to the other party for any business interruption or loss of profit, revenue, materials, anticipated savings, data, contract, goodwill or the like (whether direct or indirect in nature) or for any other form of incidental, indirect economic or consequential damages of any kind whether in contract, tort, or otherwise.
- 18.2 With the exception of workers compensation liabilities, public liabilities, product liabilities and commercial motor vehicle liabilities, each party's maximum cumulative liability relative to all other claims and liabilities, including obligations under any indemnity, whether or not insured, will not exceed the lesser of one hundred thousand dollars (\$100,000) or the price of the supplies. Supplier disclaims all liability relative to gratuitous information or assistance provided by but not required of supplier or manufacturer. Any action by either party must be brought within eighteen (18) months after the cause of action accrues. These disclaimers and limitations of liability will apply regardless of any other contrary provision and regardless of the form of action, whether in contract, tort (including negligence and strict liability) or otherwise, and will extend to the benefit of supplier's parent, subsidiaries, affiliates, vendors, appointed distributors and other authorized resellers as third-party beneficiaries.

## 19 INSURANCE.

- 19.1 During the term of the Contract, Supplier shall maintain, at its sole expense, the following minimum insurance limits:
- (a) Workers' Compensation: statutory in accordance with applicable law;
  - (b) Public Liability: ten million dollars (\$10,000,000.00) per occurrence.
  - (c) Product Liability: ten million dollars (\$10,000,000.00) per occurrence.
  - (d) Commercial Motor Vehicle Liability: ten million dollars (\$10,000,000.00) per occurrence combined single limit of liability, covering all owned, leased and non-owned vehicles.



## 20 LIEN

- 20.1 Supplier shall be entitled to a general lien on all Buyer's property in Supplier's possession and Buyer's monies held by the Supplier as security deposits, for the unpaid price of any other Supplies made to the Buyer under this or any other contract.

## 21 WAIVER

- 21.1 Failure by Supplier to insist upon strict performance of any term or condition herein shall not be deemed a waiver thereof or of any rights Supplier may have and shall not be deemed a waiver of any subsequent breach of any term or condition.

## 22 COMPLIANCE

- 22.1 **Laws, Regulations and Standards.** Supplier is responsible for compliance of any Supplies with laws, regulations and standards that are applicable at the effective date of the Contract, including, but not limited to, safety regulations and standards.
- 22.2 Supplier is not responsible for compliance with any additional or subsequent laws regulations or standards unless provided in a Statement of Work.
- 22.3 Buyer shall inform Supplier of any Buyer standards that may apply to the Supplies. Such standards shall be Supplier's responsibility only if explicitly accepted by Supplier in writing.
- 22.4 Notwithstanding any provision of this or any other contract or document, in no event shall Supplier be responsible for regulations or standards that apply to Buyer's pre-existing equipment or systems.
- 22.5 **Permits, Licences.** Buyer will be responsible for all licenses, permits, clearances or site access rights required for installation, commissioning or use of a System, excepting only licenses or permits required by law to be taken out in Supplier's name for work provided by Supplier (including its employees and subcontractors) to install or commission the System. Supplier will assist Buyer in preparation of forms and reports if and to the extent provided in any Statement of Work.
- 22.6 **Patents** The Buyer warrants that any designs, specifications or instructions furnished to SUPPLIER shall not be such as will cause SUPPLIER to infringe any patent, industrial design, copyright or trademark in the execution of the Contract. The Buyer hereby indemnifies and forever holds SUPPLIER harmless against any infringement or unauthorized use of any such industrial property. Supplies made under the Contract shall not confer on the Buyer any licence or rights to any industrial property of SUPPLIER.
- 22.7 **Aircraft.** It is a condition of the contract that the Buyer shall not use the goods for the installation in or in association with aircraft. In the event the goods are so incorrectly used, Supplier shall be exempt from all liability whatsoever and the Buyer hereby indemnifies and forever holds Supplier harmless in respect of any claims, demands, suits or proceedings whatsoever resulting from such misuse of the goods.
- 22.8 **Export Control.** The Buyer acknowledges that some United States of America manufacturers impose restrictions on ultimate destination of their products in compliance with the United States Export Administration regulations. The Buyer agrees to comply with such restrictions and hereby agrees to forever hold harmless and indemnify Supplier in respect of any damage or loss howsoever arising as a result of the Buyer's breach of same. Notwithstanding any other provision to the contrary, if U.S.A. or local law

requires export authorization for the export or re-export of any Product or associated technology, no delivery can be made until such export authorization is obtained, regardless of any otherwise promised delivery date. If any required export authorization is denied, Supplier will be relieved of any further obligation relative to the sale and/or license and delivery of the Product(s) subject to such denial without liability of any kind to Buyer or any other party.

- 22.9 **US Foreign Corrupt Practices Act.** The Buyer acknowledges that through association with the Supplier's vendors based in the United States of America, the Supplier is subject to the provisions of the US Foreign Corrupt Practices Act. The Buyer shall not seek or obtain, and the Supplier shall not offer or provide, an incentive or inducements that would be in breach of that Act.

## 23 COVENANTS

- 23.1 **Employee Solicitation.** DURING THE TERM OF A CONTRACT AND FOR TWELVE (12) MONTHS FOLLOWING THE LATTER OF THE TERMINATION DATE OF THE CONTRACT AND THE TERMINATION DATE OF THE EMPLOYEE OF SUPPLIER, BUYER SHALL NOT DIRECTLY OR INDIRECTLY SOLICIT, INDUCE OR HIRE ANY EMPLOYEE OR FORMER EMPLOYEE OF SUPPLIER WITH WHOM THE BUYER HAS HAD CONTACT AS A RESULT OF CONTRACT.
- 23.2 **Employee Compensation.** IF, NOTWITHSTANDING CLAUSE 23.1, BUYER ENGAGES OR EMPLOYS A FORMER EMPLOYEE OF SUPPLIER WITHIN THE RELEVANT PERIOD, BUYER AGREES TO COMPENSATE SUPPLIER BY PAYMENT OF AN AMOUNT NOT LESS THAN FIFTY PERCENT (50%) OF THE FINAL ANNUAL GROSS SALARY OF THE EMPLOYEE WITHIN 30 DAYS OF NOTICE BY SUPPLIER THAT BUYER HAS BREACHED CLAUSE 23.1 AND WARRANTS TO SUPPLIER THAT BUYER WILL ENSURE THAT THE EMPLOYEE DOES NOT RETAIN, USE, MODIFY, ADAPT, COPY OR TRANSFER TO BUYER OR ANY RELATED PARTY, ANY INTELLECTUAL PROPERTY OR CONFIDENTIAL INFORMATION OF SUPPLIER.

## 24 CONFIDENTIAL & BUYER INFORMATION.

- 24.1 During the term of the Contract and for a period of not less than three (3) years thereafter, each party shall maintain in strict confidence all Confidential Information and shall not use or reveal such information without the prior written authorization of the other.
- 24.2 The obligations of confidentiality and non-use will not apply to information
- that is published or becomes part of the public domain other than by means of a breach of the Contract;
  - that a party can prove by written documentation was known to it prior to disclosure by the other party;
  - that a party subsequently rightfully receives from a third party without an obligation of confidentiality;
  - that a party discloses to a third party on a non-confidential basis; or
  - that was independently developed by the receiving party.
- 24.3 Neither party will disclose the existence of the Contract or its terms.
- 24.4 Each party will take reasonable precautions to instruct its employees and consultants of its obligation under this Clause 24. Additionally, each party shall protect the exchanged information of the other against unauthorized use or disclosure with the same degree of care as it accords its own proprietary information of a similar type, but not less than reasonable care.

24.5 Disclosure of confidential information will not be precluded if it is required by law.

## 25 MISCELLANEOUS

- 25.1 **Sub-Contracting.** Supplier reserves the right to sub-contract manufacture or provision of any Supplies.
- 25.2 **Assignment.** Contract may not be assigned by either party without the written consent of the other. However, consent will not be required for internal transfers and assignments as between either party and its bank or financier, parent company, subsidiaries or affiliates.
- 25.3 **Independent Contractors.** The parties at all times shall be independent. Neither party is an employee, joint venturer, agent or partner of the other; neither party is authorized to assume or create any obligations or liabilities, express or implied, on behalf of or in the name of the other. The employees, methods, facilities and equipment of each party at all times shall be under the exclusive direction and control of that party.

25.4 **Governing Law.** These terms and conditions of sale including the Contract evidenced thereby shall in all respects be governed by and construed in accordance with the laws of the State of Victoria, Australia and Supplier and Buyer hereby submit to the exclusive jurisdiction of the courts of the State of Victoria, Australia and none other.

25.5 **Severability .** If a provision of these terms and conditions is found unenforceable by law, the remainder of these terms and conditions shall continue in full force and effect. A delay or failure in enforcing any right or remedy under this terms and conditions, shall not prejudice or operate to waive that right or remedy.

25.6 **Notice.** Written notice will be deemed to have been given hereunder when the notifying party delivers such notice to the other party or has sent such notice to the other party by certified or registered mail or telephone facsimile (with confirming letter to follow), but not by email, unless written notice of a change of address has been given in accordance with this paragraph.