

ANEST IWATA Australia Pty Ltd

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TERMS AND CONDITIONS OF SALE

1. INTERPRETATION:

These terms and conditions of sale override inconsistent terms (if any) in the Buyer's credit application and in the terms provided with a good or service, if any. These terms and conditions of sale, the terms in a Buyer's credit application (if any) and terms provided with a good or services (if any) which are not overridden, and the Additional Provisions at the end of these terms and conditions of sale, which are together referred to as "conditions", make up the entire contract between **AI-AU** and the Buyer.

In these conditions :

- a) "**AI-AU**" means ANEST IWATA Australia Pty Ltd A.C.N. 079 933 967 A.B.N. 12 079 933 967, and where the context requires or permits, its employees, officers, agents and contractors.
- b) "Buyer" means a purchaser of **AI-AU** 's goods or services from **AI-AU** and, where the context permits, includes the purchaser's successor, executor, administrator, assignee or subsequent purchaser.
- c) "good" means an item of whatsoever nature and "service" means a service of whatsoever nature, that is sold or, if the context requires, agreed to be sold by **AI-AU** to the Buyer.
- d) "delivery or delivered" means the moment the goods are collected from the premises of **AI-AU** to be transported by whatever means to the Buyer.
- e) "Our" means **AI-AU**'s and "You" means the Buyer.
- f) Where the context permits, the singular includes the plural and vice versa, and a reference to a person includes a body corporate, an incorporated association, partnership, and government body.
- g) "Including" is not to be interpreted as a word of limitation, so that examples following the word are not the only examples.

2. GENERAL:

- a) These conditions, as amended and applicable at the relevant time, apply to each supply of all goods and services (including the provision of technical advice) by **AI-AU** to the Buyer. These conditions may only be altered by written agreement between the Buyer and **AI-AU**.
- b) The prices for goods and services are exclusive of Goods & Services Tax and other taxes and are based on costs to **AI-AU** including but not limited to rates of exchange, freight, duty, insurance, labour and material costs ("**AI-AU** Cost") as at the date of the Buyer's order. If the **AI-AU** Cost increases after an order is placed by a Buyer, the price of a good or service ordered may be varied by **AI-AU** in its sole discretion to cover the **AI-AU** Cost increase. The Buyer is liable to pay any change in price, if the **AI-AU** Cost changes after an order is placed.
- c) Except as required by law, the Buyer must keep confidential any confidential information imparted to the Buyer as a result of the supply of goods or services by **AI-AU** and must not use any such confidential information except for the purpose for which it was imparted.
- d) Each order by the Buyer for the supply of goods or services is subject to **AI-AU**'s acceptance.
- e) **AI-AU** may act on instructions given by any person purporting to represent, or be authorised by, the Buyer, and the Buyer will be bound by such instructions.
- f) The Buyer agrees to use, operate and handle the goods strictly in accordance with instructions provided by **AI-AU** and instructions accompanying the goods. To the extent of any inconsistency, the instructions provided by **AI-AU** prevail.

3. PAYMENT & DELIVERY:

- a) The price and all other amounts payable for, and in any way related to the purchase of, the goods or services supplied by **AI-AU** to the Buyer ("**Amount Owing**") is due to **AI-AU** immediately on invoice. The Buyer must pay **AI-AU** the Amount Owing within 30 days of the end of the month in which an invoice is issued to the Buyer for the goods or services.
- b) **AI-AU** will use reasonable endeavours to meet any stated delivery date but **AI-AU** is not liable for any loss or damages suffered by the Buyer, nor is the Buyer entitled to cancel its order, for non-delivery on the stated delivery date or late delivery.
- c) The Buyer must take delivery of goods either by itself or through its carrier or other agent at **AI-AU**'s premises.
- d) **AI-AU** is not liable for any failure or delay to supply the goods or services, due to any cause outside **AI-AU**'s reasonable control.

4. TITLE AND RISK:

- a) Notwithstanding the passing of title as set out in sub-clause 4(b), the risk of the goods passes to the Buyer on delivery, and therefore the Buyer is liable for any damage to the goods from the moment of delivery.
- b) Title in goods passes to the Buyer on payment in full of all amounts owing from the Buyer to **AI-AU** in any way related to the purchase of the goods. Until the Buyer has paid in full the Amount Owing:
 - i. the Buyer holds the goods as a bailee for **AI-AU**;
 - ii. the Buyer owes fiduciary obligations to **AI-AU** in respect of the goods; and
 - iii. the Buyer must pay to **AI-AU** the proceeds of any on-sale of those goods and the Buyer holds those proceeds on trust for **AI-AU** until paid to **AI-AU**.
- c) If the Buyer:
 - i. has not paid in full the Amount Owing; or
 - ii. dies, becomes insolvent or if any step is taken to appoint a trustee in bankruptcy, a receiver, a receiver and manager, a provisional liquidator, a liquidator, an administrator or other like person, or if a mortgagee enters into possession of any part of the Buyer's assets or business,then
on **AI-AU**'s request, the Buyer must immediately return all goods over which **AI-AU** has title and **AI-AU** may, without notice, enter any premises where those goods are stored and repossess them without liability for trespass.
- d) The Buyer must insure the goods from the moment of delivery and, if required to do so in writing by **AI-AU**, cause **AI-AU**'s interest in the goods to be noted on the Buyer's insurance policy.

5. SHORTFALL IN DELIVERY:

The Buyer must notify **AI-AU** in writing, within 14 days from delivery, of any shortfall in the delivered goods.

6. GOODS RETURNED FOR CREDIT:

No return of goods will be accepted for credit without **AI-AU**'s prior approval and any returns must comply with the following conditions. For clarity, compliance with the following conditions is not deemed as **AI-AU**'s approval to a return:

- a) All credit claims and return requests must be made in writing to **AI-AU** within 14 days of delivery of goods, quoting **AI-AU**'s invoice number and date of purchase.
- b) Goods accepted for return, must be freight prepaid to **AI-AU**'s premises.
- c) Goods accepted for return, must be returned to **AI-AU**'s premises in the same condition as dispatched, including its packaging.
- d) Any credit given by **AI-AU** for returned goods will be reduced by a reasonable amount as determined by **AI-AU** in its sole discretion, if the condition of the goods is not as required under subclause 6(c) (including if the goods are shop soiled, marked or damaged in any way), and also reduced by handling or freight charges incurred by **AI-AU**.
- e) **AI-AU** will not credit any delivery, packing and handling charges incurred by **AI-AU** or the Buyer in the original purchase/delivery, and in the event that the goods were not defective on delivery to the Buyer, any credit given will be reduced by **AI-AU**'s then applicable handling charge.

7. WARRANTY:

- a) To the extent permitted by law, **AI-AU** excludes all implied conditions and warranties, and rights and remedies of the Buyer, implied by custom, general law or statute except any implied condition, warranty, right or remedy, the exclusion of which would contravene any statute or cause any part of these conditions to be void ("**Non-excludable Condition**"). To the extent permitted by law, **AI-AU**'s liability to the Buyer for breach of any express provision of these conditions or breach of any **Non-excludable Condition** is limited, at **AI-AU**'s option, to the replacement or repair of any goods, the resupply of any service or a refund of the price paid for the goods or service.
- b) All goods are warranted to be free from defects in material and workmanship on delivery to the Buyer ("**Warranty Defects**").
- c) The **Warranty Period** for **Warranty Defects** for **AI-AU** goods is 90 days from first delivery to the Buyer. For clarity, the **Warranty Defect** in the good must appear within the **Warranty Period**.
- d) This Warranty does not cover, and **Warranty Defects** do not include, any malfunction, damage or wear caused by faulty installation, misapplication, use and handling which is not in accordance with instructions provided with the goods or by **AI-AU**, abrasion, corrosion, inadequate or improper maintenance or

storage, negligence, accident, tampering or substitution of non genuine component parts by the Buyer, on the Buyer's behalf or instruction, or by anyone claiming through the Buyer.

- e) Except as otherwise specifically stated in these conditions and to the extent permitted by law, **AI-AU** is not liable for the expense of claiming the Warranty under these conditions.
- f) The Buyer must notify **AI-AU** in writing during the Warranty Period of any Warranty Defect. Subject to the Buyer's compliance with this notification condition at the address for notices stated in subclause 11(g) and to the extent permitted by law, goods with Warranty Defects or goods which are warranted as set out in any Non-excludable Conditions, must be returned freight prepaid by the Buyer to the point of sale for assessment within their Warranty Period, together with a full written description of the alleged defect, what fault occurred, what the goods were being used for and how they were being used, at the time fault occurred. Proof of purchase (or a copy of such) must be returned with the goods. If it proves necessary for goods to then be returned to **AI-AU** this must also be with freight prepaid by the Buyer. If no Warranty Defect or breach of Non-excludable Condition can be found, the Buyer must pay **AI-AU** a charge of \$60 per hour or part thereof for **AI-AU**'s review of the alleged Warranty Defect or breach, plus return delivery costs and applicable GST.
- g) Warranty Defects or defects to goods which are warranted as set out in any Non-excludable Conditions, for which the Buyer has complied with all conditions of the Warranty, will be repaired or replaced free of charge at **AI-AU**'s option and the Buyer's reasonable freight charges for return of the goods will be reimbursed.
- h) The benefits of the warranty given under these conditions is in addition to any other rights and remedies the Buyer has under a law in relation to the goods and services pursuant to Non-excludable Conditions.
- i) Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. For clarity, such rights are as set out in the Non-excludable Conditions to which these conditions are subject.

8. COPYRIGHT, DESIGN, INVENTION ETC:

AI-AU or the relevant manufacturer of the goods, own all copyright, design, invention, drawing or data relating to the goods or services supplied to the Buyer and the Buyer must co-operate in taking any step necessary to ensure that **AI-AU** or the relevant manufacturer, as the case may be, retains ownership.

9. ASSIGNMENT:

Without **AI-AU**'s prior written consent, and to the extent permitted by law, the Buyer cannot assign or transfer any of its rights or obligations in any way relating to the goods and services supplied by **AI-AU**.

10. BUYER DEFAULT:

- a) Should the Buyer not pay the whole or any part of the Amount Owing when due, then daily interest at the Commonwealth Bank of Australia's rate for overdrafts of over \$100,000 is payable by the Buyer to **AI-AU** from the date the Amount Owing was due to the date of actual payment.
- b) If any one or more of the following events occurs:
 - i. payments of the Amount Owing due to **AI-AU** are not received by the due date for payment;
 - ii. **AI-AU** believes, whether on reasonable grounds or not and in its absolute discretion, that the Buyer is unable to pay its debts in the ordinary course of business;
 - iii. the Buyer dies, becomes insolvent or if any step is taken to appoint a trustee in bankruptcy, a receiver, a receiver and manager, a provisional liquidator, a liquidator, an administrator or other like person, or if a mortgagee enters into possession of any part of the Buyer's assets or business,

then, without prejudice to the **AI-AU**'s other rights and remedies:

- iv. all Amounts Owing by the Buyer to **AI-AU** in relation to the goods or services are immediately due and payable in cleared funds, notwithstanding any inconsistent term or credit or earlier period granted to the Buyer for payment; and
- v. **AI-AU** is irrevocably appointed the attorney of the Buyer for the purpose of exercising its rights under these terms and conditions, law and equity.

11. FURTHER GENERAL PROVISIONS:

- a) If any provision of these conditions is illegal, invalid or unenforceable, it will be read down to the extent necessary to make it legal, valid and enforceable, but if this is not possible, then that provision will be severed and the validity and enforceability of the remaining provisions will not be affected.
- b) These conditions are governed by laws of the State of New South Wales, Australia and the Buyer agrees to submit to the exclusive jurisdiction of the Courts of New South Wales.
- c) These conditions are subject to change by **AI-AU** from time to time. The conditions applicable to a contract for the purchase of goods or services are the conditions current at the time **AI-AU** accepts a Buyer's order, subject to any changes agreed in writing by the Buyer and **AI-AU** for that particular order.
- d) A waiver, delay, failure or indulgence by **AI-AU** in exercising any right or power, does not operate as a waiver of that right or power in the future, nor of any breaches by the Buyer unless in writing by **AI-AU**.
- e) Nothing in these conditions affects the Buyer's statutory rights which cannot be excluded, except to the extent they can be excluded.
- f) Subject to any laws which cannot be excluded and to the extent that they can be excluded, and subject to any specific conditions to the contrary, **AI-AU** excludes to the maximum amount permitted by law, all liability for claims, loss or damage incurred by the Buyer, including consequential loss or damages arising from or in any way related to the purchase or intended purchase of its goods or services.
- g) **AI-AU**'s address for notices and for the return of goods in accordance with these conditions, and **AI-AU**'s other contact details, appear at the top of these Terms and Conditions of Sale.
- h) The Buyer agrees to **AI-AU** undertaking any search in relation to the Buyer on, and registering its security interest in the goods in, any register of security interests, including the Personal Property Securities Register at the cost of the Buyer.

12. INDEMNITY AND RELEASE:

To the extent permitted by law, the Buyer indemnifies and releases **AI-AU** from all liability, claims, actions, damages, costs and expenses for which **AI-AU** is or may become liable to the extent contributed to by:

- a) the Buyer's breach of these conditions;
- b) an event as set out in subclause 7 (d);
- c) the Buyer's provision of incorrect information or training in relation to the goods to another person;
- d) the Buyer's request or instruction, whether on their behalf or on behalf of another person, to **AI-AU** in relation to the modification of any goods, acknowledging that the Buyer accepts all risk of such modified goods and their performance and that the Buyer does not rely on **AI-AU** to provide advice regarding the modifications, but if **AI-AU** performs the Buyer's instruction or request to modify, the purchaser solely relies on **AI-AU** to make the modification as requested or instructed.

13. TERMINATION:

AI-AU may terminate any and all contracts made with the Buyer for any reason and at any time, without compensation excepting a refund of any payment made to **AI-AU** for a good yet to be delivered where the Buyer is not otherwise in breach of these conditions, by giving the Buyer prior written notice. Subject to the specific terms in this clause, such termination will be without prejudice to either party's earlier rights and obligations.