



## **TERMS AND CONDITIONS OF SALE**

### **Interpretation**

- 1) In this document and on any quotation, offer or other agreement "the Company" shall mean W. Granowski Pty Ltd its servants or agents and "the Purchaser" shall mean the person, persons, firm or company to whom the quotation is addressed or the offer of sale is made and shall include their legal representatives, administrators, successors and permitted assigns. "Item" and "Items" shall mean the goods sold and described on the quotation or on the face hereof.  
Headings are included for ease of reference only and do not form part of these Terms and Conditions.

### **General**

- 2) Subject to any Special Conditions agreed to in writing between the Company and the Purchaser, these Terms and Conditions together with a designated written quotation and/or a Letter of Acceptance from the Company shall comprise in entirety the terms and conditions of the contract entered into between the Company and the Purchaser. Any contractual terms and conditions of the Purchaser are expressly excluded. The agreement created by the agreement to purchase the Item is referred to herein as the "Agreement."

### **Quotation**

- 3) The Company's quotation is valid for a period of 30 days from the date of the quotation, unless another period is stated in the quotation. The Company's offer is subject to review, amendment or withdrawal by the Company at any time prior to acceptance by the Company of a purchase order or like instrument issued by the Purchaser, the expiry of the time specified in the quotation or such other specified time as may be agreed in writing. If no purchase order and acceptance is received within the specified time, the quotation will automatically lapse at the expiration of that time.

### **Acceptance**

- 4) The Company's quotation will be deemed to have been accepted and a binding contract entered into between the Company and Purchaser on the date the Company issues a Letter of Acceptance of a purchase order or like instrument received from the Purchaser, or, in the event of there being no written quotation by the Company and/or the Company elects not to issue a Letter of Acceptance, on the date the Company accepts a written order from the Purchaser, at which time the Company will commence supply arrangements for the goods and/or services described in the order.

### **Company Documents**

- 5) Clerical errors and misprints in computations, typing or otherwise in any Company document are subject to correction by the Company by either a re-issuing of the document or adjustment of the document, as the case requires. The Company shall not be liable for any cost, expense or damage incurred by the Purchaser as a result of any correction of any document by the Company.

### **Alterations and Other Agreements**

- 6) The terms of any quotation, these Terms and Conditions and any other terms and conditions of the Company's offer or of any contract entered into between the Company and the Purchaser may only be varied, altered or waived by written agreement between the Company and the Purchaser. The Purchaser acknowledges and agrees that no verbal agreement between it and any employee or agent of the Company will be binding on the Company.
- 7) These Terms and Conditions shall be read as including the terms and conditions of any supplier to the Company provided that these Terms and Conditions shall override those of the supplier in the event of a conflict.

### **Copyright and Intellectual Property**

- 8) The Purchaser acknowledges and agrees that copyright in all drawings, illustrations, designs, specifications and other information provided by the Company in connection with any quotation, contract or otherwise, remains with the Company. The Purchaser further acknowledges and agrees that the details and contents of the drawings, illustrations, designs, specifications and other information in relation to the goods or services supplied to the Purchaser shall remain confidential between the Company and the Purchaser.

### **Terms of Payment**

- 9) Where the Company provides a written quotation for equipment manufactured, supplied, or serviced by the Company the terms of payment as set out in such written quotation shall apply. In all other cases where the Company offers a credit facility to the Purchaser the terms of payment of any invoice shall be full payment by the end of the month following the month during which the invoice is rendered.





- 10) The Company may withdraw an existing Purchaser's credit facility prior to the acceptance by the Company of the Purchase Order or at other times.
- 11) If there is a change of the name, legal entity, structure or management and control of the Purchaser's business, the Company will only continue to provide credit facilities if it receives from the Purchaser written advice of the changes and has provided to the Purchaser written consent to the changes and to the continuation of the credit facilities.
- 12) Where there is no written quotation, or no credit facility is offered, the Purchaser shall pay the amount stated in the invoice on delivery of the Item to the Purchaser or its agent.
- 13) If payment in full is not made by the Purchaser by the time specified for payment, then without prejudice to any other remedies available to the Company:
  - (a) the Company may, on 10 business days' notice in writing to the Purchaser, terminate the Agreement and take possession of the Items;
  - (b) where a discount, concession or allowance is given by the Company and stated in the invoice, the discount, concession or allowance may be withdrawn in part or in full, and in such case, a written notice by the Company to the Purchaser to that effect will be deemed to be the new invoice;
  - (c) interest may be charged at the rate of 1.5% per month on a daily basis on all amounts outstanding as and from the date of the invoice; and
  - (d) the Purchaser shall be responsible for all reasonable costs incurred by the Company in recovering any outstanding amount, including any legal costs on a solicitor/client basis.

#### Prices and Charges

- 14)
  - (a) Unless the invoice otherwise states, all prices are strictly Nett;
  - (b) All prices are those current at the date of offer and as stated in the quotation, subject only to any variation clauses contained therein and to paragraph (c) hereof;
  - (c) All prices are subject only to variation where there is a variation of import prices or exchange rates payable by the Company with respect to the Item purchased, the supply of parts or equipment required for the Item or any matter relating to the Item, in which case the difference is to be paid by the Purchaser.

#### GST

- 15) For the purpose of this GST clause:

**'GST'** means GST within the meaning of the GST Act. **'GST Act'** means the A New Tax System (Goods and Services Tax) Act 1999 (as amended).

Expressions set out in italics in this clause bear the same meaning as those expressions in the GST Act.
- 16) The Company and the Purchaser warrant that they are *registered* or required to be *registered*.
- 17) To the extent that a party makes a *taxable supply* except where express provision is made to the contrary, and subject to this GST clause, the *consideration* payable by a party represents the *value* of the *taxable supply* for which payment is to be made.
- 18) If a party makes a *taxable supply* for a *consideration* which, under this clause represents its *value*, then the party liable to pay for the *taxable supply* must also pay, at the same time and in the same manner as the *value* is otherwise payable, the amount of any GST payable in respect of the *taxable supply*.
- 19) A party's right to payment under this clause is subject to a valid *tax invoice* being delivered to the party liable for the *taxable supply*.

#### Delivery

- 20) The method and date of all Items purchased shall be on the terms as stated in the Company's quotation, unless the Purchaser nominates and the Company accepts an alternative arrangement of delivery, in which case, delivery shall be at the cost and expense of the Purchaser;
- 21) The delivery dates and completion times contained in the quotation are an estimate only unless expressly stated to be an essential term of the offer and may be varied at any time by the Company due to production commitments, the availability of materials, labour and transport and other contingencies;
- 22) Delivery dates and completion times are subject at all times to variation by the Company due to delay or disruption by or due to any matter beyond the Company's reasonable control; and
- 23) Delivery shall occur when Items are delivered to the Purchaser at its premises or other agreed destination or, where the parties agree that the Items are to be collected, delivery shall occur when the Items are collected by the Purchaser or its agent at the agreed place for delivery.



#### **Inspection and return of goods**

- 24) Except where Items supplied by the Company are defective and, subject to any warranty, Items will only be accepted for return by the Company if the invoice number and full details of the reason for return have previously been supplied to the Company in writing and the Company has given the Purchaser prior written notice of its acceptance of the return of the Items;
- 25) The Purchaser shall inspect all Items received by it immediately upon receipt of the Items from the Company (receipt being the date of delivery or the date of collection, as the case requires) and the Purchaser must notify the Company in writing of any alleged short or wrong delivery, damage or other contractual breach within 7 days of receipt of the Items. If the Company does not receive such notice within the 7 days of delivery, the Purchaser shall be deemed to have accepted delivery and the Company's obligation will be deemed to have been fulfilled;
- 26) If Items are made by the Company to a specified order of the Purchaser or according to the Purchaser's specifications and design, the Company will not accept return of those Items or allow credit to the Purchaser unless defective, in which case they may be returned in accordance with these Terms and Conditions;
- 27) The Company's acceptance of return of the Items is not an acceptance of or granting of credit to the Purchaser by the Company; and
- 28) The cost and risk of returning Items shall be met by the Purchaser. The Company will reimburse the Purchaser for the cost of returning items which it accepts are defective.
- 29) No Items will be accepted for return if used or not in saleable, "as new" condition.
- 30) A 25% restocking fee will apply unless Items being returned are defective or have been issued incorrectly by the Company.

#### **Property and Risk**

- 31) Property in the Items shall pass to the Purchaser at the time the Items are paid in full by the Purchaser unless otherwise agreed in writing by the Company;
- 32) Until the Company has received payment in full for the Items the Purchaser shall hold the Items and any goods to which the Items are converted by any process as bailee for the Company;
- 33) The Purchaser may deal with the Items purchased from the Company in the ordinary course of its business provided that the Purchaser shall hold all proceeds of any such sale on behalf of the Company and shall immediately assign such sale proceeds to the Company upon receiving a request from the Company to do so;
- 34) All risks with respect to an Item purchased by the Purchaser will be borne by the Purchaser from the time the Item is delivered to the Purchaser or its agent.
- 35) The Company will, until delivery and at its own expense, maintain public and product liability insurance written on an occurrence basis with a limit of liability of up to \$20 million per occurrence in respect of loss of, or damage to, Items purchased by the Purchaser.
- 36) The Purchaser agrees to insure the Items with an insurer approved by the Company and to keep the items insured for their full insurable value until such time as title in the Items purchased passes to the Purchaser. Such insurance is to be registered in the names of both the Purchaser and the Company with their respective rights and interests noted on the policy. Any insurance proceeds arising from the insurance put in place by the Purchaser in accordance with this clause must be used to reinstate the Items or be paid to the Company.
- 37) If any of the Items is sold by the Purchaser prior to when title passes to it, the Purchaser:
  - (a) must be able upon demand by the Company to separate and identify as belonging to the Company the Items supplied by the Company from other goods which are held by the Purchaser;
  - (b) must keep separate records in relation to the proceeds of the sale of any Items which have not been paid for;
  - (c) agrees that it holds the proceeds of resupply of the goods on trust for and as agent for the Company immediately when they are receivable or are received;
  - (d) agrees that the Purchaser must either pay the the proceeds of resupply to the Company immediately when they are received or pay those proceeds into an account with a bank or a financial institution or deposit taking institution as trustee for the Company;
  - (e) agrees that any accessory or item which accedes to any of the Items by an act of the Purchaser or any person at the direction or request of the Purchaser, becomes and remains the Company's property until the Company has received payment in full for the Item;



- (f) agrees that the Company may repossess the Items if payment for the Items is not made within the time prescribed in accordance with these Terms and Conditions (or such longer time as the Company may, in its complete discretion, approve in writing);
  - (g) grants an irrevocable licence to the Company and its agent to enter the Purchaser's premises in order to recover possession of the Items pursuant to this clause. The Purchaser indemnifies the Company in respect of any damage to property or personal injury which occurs as a result of the Company entering any premises to retrieve Items pursuant to this clause; and
  - (h) irrevocably appoints the Company or its attorney to do all acts and things necessary to ensure the retention of title to goods including the registration of any security interest in favour of the Company with respect to the Items.
- 38) For the avoidance of doubt, if any Items used in a manufacturing process are mixed with other materials, the Purchaser must record the value of the Items so consumed in relation to each unit of finished product and upon sale of any unit of finished product, immediately remit that amount from the proceed of sale to the Company. The Purchaser must provide the Company monthly or quarterly with records of such use.

#### **PPS legislation**

- 39) The Purchaser acknowledges that this Agreement creates a Security Interest in the Items supplied to the Purchaser for the purposes of the Personal Property Securities Act 2009 ("PPSA") and the proceeds of sale thereof. In addition, the Purchaser grants the Company a charge in all items supplied to the Purchaser under this Agreement and the proceeds of sale thereof. The Security Interest and charges secures the performance by the Purchaser of its obligations to the Company.
- 40) Where the Items and/or Proceeds are not readily identifiable and/or traceable, or their recoverable value is insufficient to pay the Indebtedness, the Security Interest shall also extend to all the Purchaser's present and after acquired property, of which the Items form part, to the extent required to secured the Indebtedness.
- 41) The Purchaser must not create or cause to be created a Security Interest over, or in respect of its rights in, the items other than a Security Interest arising under this Agreement and other than a Security Interest granted by the Purchaser in or over all of its assets in favour of a bank or similar financial institution.
- 42) Whilst there is any Amount Outstanding, the Purchaser must immediately notify the Company if any other person attempts to enforce a Security Interest in the Items or the premises where the Items are located.
- 43) As and when required by the Company the Purchaser shall, at its own expense, provide all reasonable assistance and relevant information to enable the Company to register a Financing Statement or a Financing Change Statement and generally to obtain, maintain, register and enforce the Company's Security Interest in respect of the Items supplied, in accordance with the PPSA.
- 44) The Purchaser shall not change its name without first notifying the Company of the new name no fewer than 7 days before the change takes effect.
- 45) The Purchaser warrants that the Items are not purchased for personal, domestic or household purposes.
- 46) Notwithstanding any reference to a particular invoice/order, where any sum remains outstanding by the Purchaser on more than one invoice/order, any payments received from the Purchaser shall be deemed to be made by the Purchaser and applied by the Company in the following order:
- (a) to any obligation owed by the Purchaser to the Company which is unsecured, in the order in which the obligations were incurred;
  - (b) to any obligations that are secured, but not by a Purchase Money Security Interest ("PMSI"), in the order in which those obligations were incurred;
  - (c) to obligations that are secured by a PMSI, in the order in which those obligations were incurred.
- 47) To the extent permitted by law, the Purchaser and the Company contract out of sections 125, 132(3)(d), 142, 143 and (if permitted by section 115(7)) part (other than sections 123 (1), 126, 128, 129 (1), 133, 134 (1), 136 (1) and 136 (2)) of the PPSA. The purchaser irrevocably waives any right under sections 95, 118, 121 (4), 130 and 132 (4) of the PPSA.
- 48) To the extent permitted by law, the Purchaser waives its right to receive a Verification Statement in respect of any Financing Statement or Financing Change Statement registered by or on behalf of the Company in respect of the Security Interest created by these Terms and Conditions.
- 49) For the purpose of this PPS clause, all words and phrases starting with a capital letter shall have the respective meanings given to them under, or in the context of the PPS.



#### **Default**

- 50) Notwithstanding any other provision, either party may terminate this Agreement immediately by notice in writing to the other if:
- the other party breaches any provision of this Agreement and fails to remedy such breach within 10 business days of receipt of written notice specifying the breach, or if the breach is a material breach incapable of being remedied; or
  - the other party becomes insolvent, enters into a composition with its creditors, is declared bankrupt, goes into liquidation, or a receiver is, appointed in respect of it, ceases to carry on business, or anything analogous to any of the foregoing occurs.
- 51) In the event of default or breach in accordance with clause 13) or clause 50), the Company may, without prejudice to any other remedy open to it:
- forfeit any deposit paid and retain all progress payments received;
  - cease manufacture and delivery of all outstanding orders;
  - pursuant to a general lien held by the Company in respect to all Items purchased by the Purchaser in the Company's possession, forfeit such Items and deal with them as the Company sees fit; and
  - repossess Items held by the Purchaser for which payment has not been received and deal with such Items as the Company sees fit.
- 52) If the Company elects not to determine the Contract with the Purchaser the Company may by notice in writing to the Purchaser cancel or vary any credit facilities, concessions or discounts available to the Purchaser.

#### **Warranties**

- 53) The Company warrants that:
- it has the right to sell the Items to the Purchaser and upon payment in full for the Items (whichever is earlier) the Purchaser will have good title to the Items free and clear of all interests and encumbrances;
  - it is suitably qualified and experienced to supply and deliver the Items by the agreed delivery date;
  - the Company's obligations will be performed in accordance with these Terms and Conditions and to best practice standards of diligence, skill, care and efficiency expected of a competent contractor supplying and delivering goods of a similar nature to the Items;
  - neither the supply of the Items to the Purchaser or the use of the Items by the Purchaser shall in any way infringe any patent, trademark, copyright or other intellectual property of any third party;
  - The Items will:
    - be packaged in a safe and adequate manner;
    - comply with the requirements of these Terms and Conditions and relevant and applicable laws, regulations, codes and standards;
    - be of acceptable quality and fit for any particular purpose which the Purchaser has made known to the Company at the time of ordering;
    - be free from all defects and if the Company has provided any samples of Items or demonstrations of performance, the Items will be of the same nature and quality as the sample or demonstration provided.
- 54) Items of machinery manufactured and supplied by the Company are warranted against faulty workmanship and/or faulty materials for a period of 12 months from the date of the issue of the Certificate of Completion of manufacture, unless the Company provides a written quotation for Items of equipment manufactured and supplied by the Company which provides for a lesser period of time, in which event the lesser period of time shall apply.
- 55) Componentry and consumables manufactured and supplied by the Company are warranted against faulty workmanship and/or faulty materials for a period of 1 month from the date of supply.
- 56) The warranties provided by this clause apply only for the benefit of the Purchaser and are void if installation or operation of the Items by the Purchaser or any third party is not in accordance with the manufacturer's instructions and recommendations.
- 57) The Warranties offered in this Warranty clause are limited to the repair or replacement of the faulty components. The Company may require the faulty component to be set aside for inspection purposes and or returned to the site of original manufacture at its cost.



#### **Limitation of liability**

- 58) Subject to any express written warranty otherwise given by the Company, and subject to any warranties which by law cannot be excluded, all warranties, conditions and representations, whether express or implied, are expressly negated.
- 59) Subject to conditions express or implied by law, the Company's liability for any breach of any implied condition, warranty, guarantee or right in connection with the supply of Items is limited to one or more of the following (at the election of the Company):
- (a) replacement of the Items or supply of equivalent Items;
  - (b) payment of the cost of replacing the Items or acquiring equivalent Items;
- 60) Subject to conditions express or implied by law, the Company's warranties shall be null and void and of no effect if:
- (a) the Items sold are abused or operated outside the limits of the specifications and design in any respect whatsoever,
  - (b) any defects are caused by fair wear and tear, wilful damage, negligence or untrained or unskilled use in the operation, installation or storage of the Items,
  - (c) the Purchaser in any respect alters the Items purchased by it or adds to it or removes any materials from such Items, or
  - (d) the Purchaser fails to immediately notify the Company in writing of any defect or fault in the Items purchased or fails to provide full details of any such failure or fault prior to returning the Items to the Company.
- 61) In no circumstances will the Company be liable for any special, indirect or consequential loss or damage arising out of or in connection with the supply of the Items or this Agreement.

#### **Cancellation**

- 62) Cancellation of any order placed with the Company will incur a minimum of 10% of the contract sale price and any deposit received will, at the Company's option, be forfeited. Where work has commenced, whether it be design or fabrication, cancellation charges would include all labour performed, materials purchased, engineering and administrative charges pertaining to the cancelled order. In any case where an order is cancelled, only the partially completed or completed equipment becomes the property of the Purchaser and the designs remain the property of the Company. Payment of cancellation costs would be Nett 30 days and subject to the late payment conditions.
- 63) Freight and transport costs for goods returned to and from the Company in the event of cancellation shall be at the Purchaser's expense.

#### **Production**

- 64) No compensation will be considered by the Company for lost production time or any expense or penalties incurred with production losses borne by the Purchaser.

#### **Force Majeure**

- 65) The Company shall not be liable or incur any penalty for delays in delivery resulting from acts of war, industrial action, acts of God, Government action, riot, civil commotion, failure by the client to fulfil its commitments in due time, inability to obtain materials, or any other occurrence (whether of the same or different in kind or nature) which was unavoidable or beyond the control of the Company.

#### **Service of Notices**

- 66) Any notice or document required to be served under these Terms and Conditions or under any Contract entered into between the Company and the Purchaser will be sufficiently served if either left at the address of the respective party as stated in the Contract or as otherwise notified from time to time in writing by that party or if posted by prepaid post to such address. If the document or notice is posted, service will be deemed to have been effected 3 days after the date on which the document or notice was posted.

#### **Applicable Law**

- 67) Unless otherwise agreed in writing by the Company, the sale of all Items by the Company shall be governed by the applicable law in the State of Victoria.