

# EDGE ELECTRONS (AUSTRALIA) PTY LTD

## TERMS OF SALE

### 1. DEFINITIONS

1.1. In these Terms:

“**ACL**” means the Australian Consumer Law under the Competition and Consumer Act 2010 (Cth).

“**Act**” means the Corporations Act 2001 (Cth).

“**Company**” means Edge Electrons (Australia) Pty Ltd, 17 Prince Patrick Road, Melbourne AUS (ABN 94 168 621 565) and its successors and assigns.

“**Confidential Information**” means any written or oral information of a technical, business or financial nature or which is taken by any provision of these Terms to be Confidential Information, or which the Company makes the Customer aware is considered by the Company to be confidential and proprietary, and includes all information that is personal information for the purposes of the Privacy Act, but does not include information which the Customer can establish:

- (a) was in the public domain when it was given to the Customer;
- (b) becomes, after being given to the Customer, part of the public domain, except through disclosure contrary to these Terms of Sale;
- (c) was in the Customer’s possession when it was given to the Customer and had not been acquired in some other way (directly or indirectly) from the Company; or
- (d) was lawfully received from another person who had the unrestricted legal right to disclose that information free from any obligation to keep it confidential.

“**Customer**” means the party acquiring Products on these Terms.

“**Default Rate**” means 1.5%.

“**Delivery**” means delivery of the Goods by the Company to the Customer in accordance with clause 11.

“**End User**” means any party to whom Goods are supplied or provided by the Customer, including where those goods are installed on that party’s property (whether commercial or residential in nature);

“**End User Data**” has the meaning given to that term by clause 20;

“**Goods**” mean any Edge PowerSave, EdgeIQ, eSensor and any other equipment that the Company offers for sale under these terms, and may include ancillary features and components such as packaging, parts, delivery, installation and manuals for the Goods, as notified by the Company from time to time.

“**GST**” has the meaning given to that term in the GST Law.

“**GST Law**” has the meaning given to that term in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

“**Insolvency Event**” means, for a person, being in liquidation or provisional liquidation or administration, having a controller (defined in the Act) or similar appointed to it or its property, being taken under s459F(1) of the Act to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or becoming incapable of managing its affairs for any reason, taking any step that could result in becoming insolvent under administration (defined in the Act), entering a compromise or arrangement with, or assignment for the benefit of, its members, creditors or any analogous event.

“**Installation Date**” means the date which the Products is properly installed and capable of operating.

“**Intellectual Property Rights**” means all present and future rights throughout the world conferred by statute, common law (including passing off) or equity in or in relation to inventions, discoveries, innovations, know-how, technical information and data, prototypes, processes, improvements, patent rights, circuitry, drawings, plans, specifications, copyright, trade mark rights, designed rights, plant variety rights and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether or not registrable, registered, or patentable. These include all rights in all applications to register these rights, all renewals and extensions of these rights and all rights in the nature of these rights.

“**Monthly Fee**” means the amount specified in the Order as the “Monthly Fee” in relation to Services, as may be updated from time to time in accordance with these Terms.

“**Order**” means a document provided by the Customer to the Company, containing the delivery date, delivery point, the Products to be purchased and the price for the Products, and other details required to complete the order. The Company may make an order form available in the form of a Purchase Order, online terms or otherwise.

“**Personal Information**” has the same meaning as is given to that term in the Privacy Act.

“**PPSA**” means Personal Property Securities Act 2009 (Cth).

“**PPSR**” means the Personal Property Securities Register established pursuant to the PPSA.

“**Privacy Act**” means the Privacy Act 1988 (Cth).

“**Products**” means the Goods and/or Services.

“**Secured Property**” means all Goods that are supplied to the Customer by the Company (whether now or in the future).

“**Security Interest**” is defined in section 12 of the PPSA.

“**Services**” means services associated with the Goods and includes monitoring services, for example:

- (a) the service of providing (via both URL access and an application) voltage and energy monitoring and alerts notifications in respect of a Customer’s Goods; and/or
- (b) the service of providing (via both URL access and an application) voltage and energy data analysis and reporting, including in the form of graphical displays.

“**Terms**” means these Terms of Sale including other documents to the extent they are incorporated by reference, which apply to and are incorporated into, an Order to the exclusion of any other terms and conditions contained in any letter or other documents of the Company, the Customer or an End User.

“**Warranty Period**” means a period as set out on the Order in respect of a particular Product, commencing from the date of Installation Date (unless otherwise advised by the Company).

### 2. GENERAL

2.1. The Company agrees to supply and the Customer agrees to take the Goods and purchase the Services in accordance with these Terms.

2.2. These Terms are deemed to be incorporated into all Orders for Products to be supplied by the Company to the Customer. The parties may expressly agree in writing to vary or augment the terms applying to the Customer generally, or to a particular Order, in which case that agreement forms part of these Terms and prevails to the extent of inconsistency.

2.3. If the Customer places an Order with the Company for Products, or enters into a contract with the Company for the Products, and the Products are delivered or provided to the Customer, or the Customer provides any payments to the Company, the Customer is taken to have accepted these Terms provided they are made available to the Customer, including by publication on the Company’s website.

2.4. The Customer must, no less than 14 days prior to any change of ownership, registered particulars, shareholding, directorship, name or address, notify the Company of the proposed change.

### **3. QUOTATION AND ORDER**

- 3.1. Any quotation for Products prepared by the Company is not an offer by the Company and it may be withdrawn or altered without notice. Unless the Company withdraws it, a quotation is valid for the stated period or if no period is stated, 20 days after the date of quotation.
- 3.2. Notwithstanding the above, any quotation provided by the Company is an invitation to treat only and not an obligation to sell or offer and the Company reserves the right at its option, to accept or reject any Orders received.
- 3.3. All Orders submitted by the Customer to the Company for Products will constitute an offer and will be subject to acceptance by the Company in its absolute discretion. An accepted Order prevails over these Terms to the extent of inconsistency.
- 3.4. Orders cannot be modified or cancelled by the Customer after acceptance except with the Company's written consent. The Company will not agree to cancellation of an Order unless the Customer pays to the Company a reasonable cancellation charge (as set by the Company) including compensation for all loss and damage arising from the cancellation of the Order.

### **4. GOODS**

- 4.1. When the Customer orders Goods, the Customer must inspect the Goods provided by the Company immediately on supply of the Goods to the Customer, and must within 14 days after the date of supply of the Goods (**Supply Date**) give written notice to the Company of any claim in the event that the Goods are defective, supplied in error, or if there are any discrepancies in the quantity delivered (including particulars of the claim).
- 4.2. If the Customer fails to give written notice to the Company pursuant to clause 4.1 above, then to the extent permitted by law, the Goods are deemed to have been accepted by the Customer in accordance with these Terms.
- 4.3. The Company may immediately cancel any Order (in whole or in part) by notice to the Customer and resell the Goods if the Customer fails to comply with any of its obligation under these Terms, or if an Insolvency Event occurs in respect of the Customer.
- 4.4. Upon cancellation of any Order, the Customer must indemnify the Company for any costs and expenses incurred by the Company prior to cancellation and must pay any reasonable cancellation charges fixed by the Company.
- 4.5. This clause 4 is at all times subject to clause 14.

### **5. SERVICES**

- 5.1. When the Customer orders Services, a minimum term for the Services may apply as set out on the Order, commencing from the date of installation of the associated Goods, during which time the Monthly Fee is payable for each month.
- 5.2. After a minimum term is completed for the Service, the Customer may:
  - a) provide the Company with 30 days' notice that it no longer requires the Services, in which event the term for that Service ends, and no further Monthly Fee is payable; or
  - b) continue to purchase the Services associated with the Goods, in which event the term for that Service continues, and the Monthly Fee continues to apply until notice is provided under clause 5.2.a).
- 5.3. If no minimum term applies, the Monthly Fee is payable each month that the Company provides the Services.

### **6. PRICE OF PRODUCTS**

- 6.1. Unless the Company agrees in writing and subject to any quotation given and accepted under clause 2, the price of the Products will be on the Order. Any price concession provided to the Customer is conditional on the Customer's strict compliance with these Terms.
- 6.2. The Company shall be entitled to increase the price of Services from time to time by written notice to the Customer, including during a minimum term. The price increase is effective 30 days after such notice is given.
- 6.3. Prices quoted are in Australian Dollars unless stated otherwise and are those applying at the date of issue of quotation subject to adjustment (including a proportional adjustment for fixed costs and profit) for any variation in the cost of labour, material or transport, exchange rates, customs duty, freight, shipping expenses, sorting and tracking charges or insurance and any other charges affecting the cost of production.
- 6.4. Unless a price quoted by the Company is stated to be inclusive of GST, it will be deemed exclusive of GST.

### **7. PAYMENT TERMS**

- 7.1. The Company will issue an invoice to the Customer with respect to the Goods sold to the Customer, on or about the date the Goods are delivered to the Customer.
- 7.2. Unless clause 7.4 applies or otherwise agreed in writing by the Company, the Customer must pay for the Goods within 14 days of the date of the invoice for the Goods.
- 7.3. The time for payment of the Goods is of the essence, and all payments must be made on or before the due date as a condition to future deliveries of Goods under these Terms.
- 7.4. The Company reserves the right to vary the terms of payment and to require additional security at any time prior to delivery of the Goods if the creditworthiness of the Customer becomes, in the Company's opinion, unsatisfactory, in which the case the Company may request appropriate security from the Customer on terms acceptable to the Company.
- 7.5. Unless a direct debit arrangement is entered into, the Company will issue an invoice to the Customer with respect to the Monthly Fee for the Services in accordance with these Terms, on a monthly basis.
- 7.6. If applicable, the Customer will make payment of each invoice for Services to the Company either:
  - a) in prepayment of an Order where required by the Company; or
  - b) within 30 days of the receipt of the invoice.

### **8. PAYMENT METHOD AND DEFAULT**

- 8.1. The Company may require immediate payment of all amounts outstanding (whether or not then due and payable):
  - a) if the Customer does not comply with these Terms;
  - b) if the Company considers that the creditworthiness of the Customer has become unsatisfactory; or

- c) if one or more Insolvency Events occur.
- 8.2. All payments must be made by cheque or by direct funds transfer to the Company's nominated bank account as stated on the invoice, or another method notified by the Company in writing from time to time, including by a third party payment facility. The Company may, prior to or during the provision of the Services, require the Customer to complete and agree a Direct Debit Request Form or similar payment authorisation, and the Customer will comply with such requirement.
- 8.3. If the Customer has not paid the Company in full any monies owing to the Company by the due date, the Company may in its sole discretion without giving the Customer prior notice terminate these Terms (or the applicable underlying contract) and seek to recover the Goods and resell or dispose of the Goods, without prejudice to any claims for loss or damages against the Customer.
- 8.4. In the event that the Customer has not paid any monies owing to the Company by the due date, the Customer is liable to pay the Company's reasonable costs with respect to collecting any overdue monies, including without limitation legal fees, debt collection costs and payment of the Company's administrative costs.  
Without limiting any other rights of the Company, any monies owing under these Terms which are not paid when due will bear interest at the Default Rate, calculated daily and compounded monthly on and from the date such monies first become due to the Company.

## **9. DISCREPANCY AND RETURN OF GOODS**

Other than to the extent required under applicable laws as noted in clause 13:

- 9.1. The Company is not obligated to accept in any case the return of Goods for credit.
- 9.2. If the Customer wishes to reject the Goods due to a fault, the Customer must, within 14 days of receipt of the Goods, notify the Company that it wishes to return the Goods to the Company including a statement confirming why the Goods are being returned to the Company. If the Company agrees to accept the returned Goods, the Company will provide the Customer with a return authorization number (Authorization Number).
- 9.3. Upon receipt of the Authorization Number the Customer has 7 days to return the Goods to the Company. Any Goods returned to the Company after 7 days of receipt of the Authorization Number will incur a restocking fee.
- 9.4. The Goods must be in their original saleable packaging and include all accessories, manuals and instructions.
- 9.5. The Customer must bear the cost of the return freight and transport charges for returned Goods unless the Company otherwise agrees in writing.

## **10. GST**

- 10.1. Unless otherwise stated, the prices stated in these Terms and in any price list are exclusive of GST.
- 10.2. In addition to the price for the Goods, the Customer must pay to the Company an amount equal to any GST the Customer must pay for any supply by the Company under these Terms.
- 10.3. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the price for the Goods.
- 10.4. The Customer indemnifies the Company for any loss that the Company may incur as a result of the incorrect payment or non-payment of any GST and associated fees or penalties.
- 10.5. If the Company becomes liable for any penalties or interest as a result of a late payment of GST, where that late payment is as a direct result of a failure of the Customer to comply with this clause 10, the Customer must pay to the Company an additional amount on demand equal to the amount of those penalties and interest.

## **11. ACCEPTANCE AND DELIVERY**

- 11.1. All Goods will be delivered to the Customer by the Company to the address stipulated in the Order unless agreed otherwise in writing by both parties.
- 11.2. The Company will have the sole and absolute discretion as to the choice of carrier and method of carriage of the Goods, unless otherwise agreed by the Company in writing.
- 11.3. Any time quoted for Delivery is an estimate only. The Customer must accept the Goods even in the event of a delay.
- 11.4. A failure of the Company to deliver part of the Goods will not entitle the Customer to cancel the balance of an Order.
- 11.5. Subject to clause 13, the Company is not liable to the Customer for any loss or damage (including consequential loss or damages) arising from late Delivery or non-delivery of the Goods.
- 11.6. If the Company determines that it is or may be unable to deliver the Goods within a reasonable time (or at all) the Order may be cancelled by the Company in its sole and absolute discretion by giving the Customer 7 days' notice in writing of the Company's intention of doing so. Subject to clause 16, if an Order is cancelled, the Customer will have no claim against the Company for any loss or damage (including consequential loss or damage) arising from the cancellation.
- 11.7. Subject to clause 16, the Customer must indemnify the Company against any claim, loss or damage suffered by the Company, or as a result of the Company becoming liable to any third party (directly or indirectly,) as a result of the Company or its employees, contractors or agents entering any premises for the purpose of delivering the Goods.
- 11.8. Expected Delivery times for Goods ordered the Customer are within 1 week from the date of any Order.

## **12. PPSA**

- 12.1. The Customer acknowledges that these Terms create a Security Interest in the Secured Property and the proceeds of sale of the Secured Property for the purposes of the PPSA, which Security Interest remains in effect until full and unencumbered title to the Goods passes to the Customer under these Terms.
- 12.2. The Customer consents to the Company effecting a registration on the PPSR (as the Company deems appropriate) in relation to the Security Interest arising under or in connection with these Terms and the Customer agrees to provide all assistance required by the Company to facilitate this.
- 12.3. The Customer acknowledges and agrees that in relation to the part of the Secured Property that is inventory, the Customer will not allow any Security Interest to arise in respect of that Secured Property unless the Company has perfected the Security Interest in the Secured Property prior to the Customer's possession of the Secured Property.
- 12.4. If Chapter 4 of the PPSA applies to the enforcement of the Security Interest arising under or in connection with these Terms, the Customer agrees:  
(a) to the extent that s115(1) of the PPSA allows this, the following provisions of the PPSA will not apply to the enforcement of that Security Interest: s95 to the extent that it requires the Company to give a notice to the Customer, s96, s121(4), s125 (obligation to dispose of or retain collateral), s130 to the extent that it requires the Secured Party to give notice to the Customer, ss132(3)(d), ss132(4), s142 and s143 (reinstatement of security agreement); and

- (b) to the extent that s115(7) of the PPSA allows this, the following provisions of the PPSA will not apply to the enforcement of that Security Interest: s127, s129(2) and (3), s132, s134(2), s135, s136(3), (4) and (5) and s137.
- 12.5. If the Customer makes payments to the Company at any time whether in connection with these Terms or otherwise, the Company may in its absolute discretion apply that payment in any manner it sees fit.
- 12.6. The Customer agrees to immediately notify the Company of any changes to its name or address.
- 12.7. The Customer agrees to do anything that the Company requests the Customer to do (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed):
- (a) to provide more effective security over the Secured Property;
  - (b) to register in respect of a Security Interest constituted by these Terms at any time;
  - (c) to enable the Company to exercise its rights in connection with the Secured Property; and
  - (d) to show the Company whether the Customer has complied with these Terms.
- 12.8. The Customer will pay on demand any losses arising from, and any costs and expenses incurred in connection with, any action taken by the Company under or in relation to the PPSA, including any registration, or any response to an amendment, demand or a request under s275 of the PPSA.
- 12.9. Any notices or documents which are required or permitted to be given to the Company for the purposes of the PPSA must be given in accordance with the PPSA.
- 12.10. The Customer waives the right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

### **13. DISCLOSURES**

- 13.1. Both parties agree not to disclose information of the kind mentioned in s275(1) of the PPSA, except in the circumstances required by s275(7)(b) to (e) of the PPSA. The Customer agrees that it will only authorize the disclosure of information under s275(7) (c) or request information under s275(7) (d), if the Company approves it.
- 13.2. This clause 11 will not prevent any disclosure by the Company that the Company believes is necessary to comply with its other obligations under the PPSA or under any other applicable law.
- 13.3. To the extent that it is not inconsistent with clauses 13.1 and 13.2 above constituting a "confidentiality agreement" for the purposes of s275(6)(a) of the PPSA, the Customer agrees that the Company may disclose information of the kind mentioned in s275(1) of the PPSA to the extent that the Company is not doing so in response to a request by an "interested person" (as defined in s275(9) of the PPSA) pursuant to s275(1) of the PPSA.

### **14. IMPLIED TERMS**

- 14.1. The Company acknowledges that where the supply of Products is a "consumer" supply under the ACL, certain statutory express and implied guarantees and warranties will be implied into these Terms (**Non- Excluded Guarantees**).
- 14.2. The Company acknowledges that nothing in these Terms purports to modify or exclude the Non-Excluded Guarantees.
- 14.3. Except as expressly set out in these Terms or in respect of the Non-Excluded Guarantees, the Company makes no warranties or other representations under any contract with the Customer or these Terms. The Company's liability in respect of these warranties is limited to the fullest extent permitted by law.

### **15. WARRANTIES AND GUARANTEES**

- 15.1. Subject to clause 14 unless otherwise agreed in writing by the Company, the Company warrants to repair or replace (at the Company's option) all Goods and their components manufactured by it which the Company, in its sole and absolute discretion, determines are defective in materials or workmanship under normal use and service, from the Installation Date up to the expiration of the relevant Products' Warranty Period. Customer may purchase an extended warranty if Customer has continuously purchased Services offered by the Company from the Installation Date.
- 15.2. While the Goods are in custody of the Company for investigation or repair they will be at the risk of the Customer and the Company or its employees or agents will not be liable for any damage to the Goods.
- 15.3. Parts and labour for repair or replacement pursuant to clause 15.1 will be provided by the Company during normal working hours at a place of business of the Company and the Company will have no liability for the cost of transportation of the Goods to such a place of business.
- 15.4. All rejected parts or defective parts will be the property of the Company to dispose of as it sees fit.
- 15.5. Goods that are classified as "consumer" goods come with guarantees that cannot be excluded under the ACL. If a Good is classified as a "consumer good", the Customer is entitled to a replacement or refund (at the Company's discretion) for a major failure and compensation for any other reasonably foreseeable damage. The Customer is 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. The warranty in clause 15.1 against defects is given in addition to other rights and remedies of the ACL.
- 15.6. Any deviation in treatment, handling, installation and/or use from the installation or operations manuals, and/or failure to register the Product or failure to maintain internet connection may void this warranty. This includes events such as operating the unit in conditions that exceed regulatory guidelines, e.g., harmonics or by not maintaining the communications link and data transfer to Edge Electronics.
- 15.7. The provider of warranties given under these Terms is the Company. Warranty enquiries should be made via email: [enquiries@edgeelectronics.com](mailto:enquiries@edgeelectronics.com).

### **16. LIMITATION OF LIABILITY AND INDEMNITY**

- 16.1. Other than as expressly provided for in clause 15 and subject to the limitations in clause 14, the Company, its employees, contractors and/or agents will not be liable for any loss or damage (including consequential loss or damage, which includes without limitation, loss of profits and loss of revenue) of any kind whatsoever, even if due to the negligence of the Company, its employees and/or agents.
- 16.2. Subject to clause 15, the Customer acknowledges that it has not relied on any representation, description, or statement by the Company in relation to the Products, or the skill or judgement of the Company, its agents, contractors or employees, as to if the Products are fit for a particular purpose.
- 16.3. The Customer acknowledges it has relied solely on its own inspection, skill and judgement in purchasing the Products.

### **17. CUSTOMER COVENANTS**

- 17.1. The Customer acknowledges and agrees that any particulars provided by the Company, such as dimensions and illustrations, relating to the Goods and Services are approximate only and any deviations from these will not result in the Customer being able to make any claim against the Company for any loss or damage (including consequential loss or damage) suffered by the Customer which arises from such deviation.

- 17.2. The Company accepts no responsibility for errors in dimensions, quantities, or specifications in relation to Goods delivered to the Customer by the Company where the error arises from an Order that the Customer has placed with the Company.
- 17.3. The Customer agrees to provide a "Harmonic Environment" to ensure the proper performance of the Goods, and the Company accepts no responsibility if the Goods perform below standard in a low harmonic environment provided by the Customer. Harmonic Environment means site voltage harmonics' vTHD operates within the relevant network regulated levels. If the site voltage harmonics' vTHD exceed the relevant network regulated levels, warranty provided by the Company shall expire.
- 17.4. The customer agrees and understand that any of Edge's device(s) will not be installed and operated in a property where any person(s) is/are on life support system.

## **18. TITLE AND RISK**

- 18.1. Risk in Goods will pass to the Customer upon Delivery of the Goods by the Company (unless otherwise agreed in writing).
- 18.2. Title in the Goods will not pass to the Customer until the Customer has paid the Company all amounts owing whether by single payment or by instalments in accordance with the relevant Order, for the Goods (all cheques or negotiable instruments have been paid) and the Customer has met all other obligations due by the Customer to the Company in respect of these Terms, and until the above obligations have been satisfied, the Customer acknowledges and agrees that the Customer:
  - (a) holds the Goods as bailee only;
  - (b) must store the Goods supplied in a way that it is clear that they are the Company's property; and
  - (c) irrevocably authorizes the Company to enter any premises where the Goods are kept and, if necessary, to use the Customer's name and to act on the Customer's behalf to recover the Goods.

## **19. PRIVACY**

- 19.1. The Company will collect information in relation to the Customer, for the purpose of providing the Products to the Customer in accordance with these Terms, and in accordance with the laws relating to the collection and disclosure of Personal Information under the Privacy Act, as amended from time to time.
- 19.2. The Company will also collect information in relation to the End User, in accordance with the laws relating to the collection, use and disclosure of Personal Information under the Privacy Act. The Customer will have no right to the access or use of any Personal Information collected by the Company in relation to an End User.
- 19.3. All Personal Information is to be treated as Confidential Information for the purposes of these Terms.

## **20. END USER DATA**

- 20.1. The Company may use the Products to collect data from End Users, including with respect to the End User's usage of the Products, the End User's commercial or residential property, the End User's Personal Information, and other information collected by the Products ("**End User Data**").
- 20.2. The Company will be the sole owner of the End User Data, and the Customer will have no right to receive, use, transmit or otherwise engage with the End User Data.
- 20.3. The Company may, in its sole discretion, retain, use, transmit, sell, disclose, assign its rights to, licence, or otherwise engage with or dispose of the End User Data.
- 20.4. The use of any End User Data by the Company will be in accordance with the requirements of any applicable law, including (but not limited to) the Privacy Act.
- 20.5. The Customer warrants that it will not, at any time, require an End User to provide, transmit or give the Customer access to any End User Data, and will take no action to contract with or otherwise require an End User to provide, transmit or give the Customer access to any End User Data.
- 20.6. The Customer is to keep the Company indemnified against any losses suffered by the Company (howsoever arising) in relation to a breach of this clause 20.
- 20.7. All End User Data is to be treated as Confidential Information for the purposes of these Terms.
- 20.8. Where the Customer supplies Products to an End User, the Customer must make that supply conditional on consent from the End User that the End User Data will be collected by the Company subject to the terms of this clause 20.
- 20.9. Where a Customer does not meet their obligation in clause 20.8, the Company's liability in relation to any loss or damage suffered by the Customer, the End User or any third party will be limited to that as required by law, including as set out in the ACL.

## **21. INTELLECTUAL PROPERTY**

- 21.1. The Customer acknowledges that all rights in respect of patents, copyrights, design rights, trade marks or other industrial or intellectual property rights connected with the Products shall not pass to the Customer.
- 21.2. The Customer shall indemnify the Company against any and all liabilities, claims and costs incurred by or made against the Company as a direct or indirect result of carrying out of any work required to be done on or to the Products in accordance with the requirements or specifications of the Customer involving any infringement or alleged infringement of any rights of any third party.
- 21.3. All Intellectual Property Rights, including but not limited to copyright, patents, design rights, trademarks, software and licences in, or related to, Products supplied by the Company remain the property of the Company and shall not be available in any form to third parties, nor re-used by the Customer, unless agreed to in writing by the Company.
- 21.4. Any software supplied by the Company may be used by the Customer only in respect of the Products specified.
- 21.5. Use of Products which contain, or are to be used with, standard or custom software or firmware may be subject to the Customer's acceptance of additional terms and conditions in separate Company or third-party licence agreements (Third Party Licence Agreements). Where there is a conflict between any term of a Third Party Licence Agreement and these Terms of Sale, the Third Party Licence Agreement will prevail to the extent of the inconsistency. In the absence of a Third Party Licence Agreement, the Purchaser is granted a non-exclusive, non-transferable and royalty free licence to use the purchased software or firmware only in object code form and solely in conjunction with the Products, with no rights to sublicense, disclose, disassemble, decompile, reverse engineer, or otherwise modify the software or firmware.
- 21.6. The Purchaser must not alter, remove, or in any way tamper with, or otherwise do anything adverse to, any Intellectual Property Rights (including but not limited to trade marks), whether registered or unregistered, or numbers of the Company or its suppliers attached to or placed on the Products.
- 21.7. Unless otherwise declared in writing at time of sale, where the Customer re-sells Goods to an End User, the Goods must be resold in the original packages.
- 21.8. The Purchaser acknowledges that there is no transfer of title, interest or ownership to any Intellectual Property Rights in the Intellectual Property Rights of the Company and its related companies.

related companies) will strictly enforce any rights (including the right to damages) in respect of any infringement of the Company's Intellectual Property Rights arising in any manner whatsoever (including substitution, passing off or other improper use). The Customer must not itself use any logo, business name or intellectual property of the Company.

21.9. If any action, suit proceeding, claim or demand is brought or made alleging that the sale, use or any other dealing with the Products infringes the Intellectual Property Rights or industrial rights of third parties, the Customer shall forthwith notify the Company thereof and give every assistance to the Company in connection therewith as the Company may reasonably require and shall not itself handle, deal with or compromise any such action suit proceedings, claim or demand except with the prior written consent of the Company.

## **22. CONFIDENTIAL INFORMATION**

22.1. The Customer must:

- (a) keep the Confidential Information private and secret;
- (b) not access, use or reproduce Confidential Information for any purpose other than in connection with the Products supplied to the Customer by the Company nor assist or permit any other person to do so;
- (c) not disclose Confidential Information except as permitted under these Terms of Sale; and
- (d) take all steps reasonably necessary to safeguard the Confidential Information from unauthorized access, use or disclosure.

22.2. The Customer may disclose Confidential Information only with the prior written consent of the Company.

22.3. All descriptive specifications, illustrations, drawings, data, dimensions and weights furnished by the Company or otherwise contained in Company's publications including price lists, brochures, catalogues, electronic media and other advertising material of the Company are approximate only and are intended to be by way of general description of the Products and shall not form part of the Terms of Sale between the Company and the Customer unless otherwise specified by the Company in writing, in which case, they shall be subject to recognized tolerances and rejection limits. The Company does not agree to comply with any specifications and drawings referred to in any order unless such specifications and drawings have been produced to the Company prior to the delivery of Products and have been agreed to in writing and signed by a duly authorized representative of the Company.

22.4. Following agreement to purchase, if the Customer requests the Company to provide

certified drawings, the Company may, at its discretion, provide such certified drawings at the Company's reasonable expense.

22.5. Any drawings, studies or other documents submitted by the Company to the Customer remain the property of the Company and constitute the confidential information, Intellectual Property Rights and copyright of the Company. The Customer must not use them for any purpose other than in accordance with these Terms and must not transmit, disclose or make them available to any third parties without the prior written consent of the Company.

22.6. Where the Customer comes into possession of any End User Data, the Customer must, as soon as practicable, take steps to notify the Company of this receipt, and thereafter dispose of any and all copies of the End User Data.

## **23. DISPUTES**

23.1. The parties will use their best endeavours and attempt in good faith to promptly resolve any dispute arising in connection with these Terms. Any dispute not resolved within 30 days of a party notifying the other party in writing of the dispute may then be submitted to a court of competent jurisdiction in Victoria Australia in accordance with these Terms. These procedures are the exclusive procedures for the resolution of all such disputes between the parties under these Terms.

## **24. GENERAL**

24.1. Any right that the Company may have under these Terms is in addition to, and does not replace or limit, any other right that the Company may have.

24.2. Any provision of these Terms which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make these Terms enforceable, unless this would materially change the intended effect of these Terms.

24.3. The Customer must not assign its benefits or novate its obligations under these Terms without the prior written consent of the Company in writing. The Company may assign its rights and novate its obligations under these Terms to another person without the consent of the Customer.

24.4. The Company is entitled to vary these Terms at any time by giving the Customer 14 days' prior written notice.

24.5. These Terms constitute the entire agreement between the Company and the Customer and supersede all prior representations, contracts, statements and understandings, whether verbal or in writing. All other terms and conditions are excluded to the fullest extent permitted by law including any terms and conditions which the Customer may from time to time seek to impose.

24.6. A right of the Company may only be waived in writing, signed by the Company. No other conduct of the Company (including a failure to exercise, or delay in exercising, the right) operates as a waiver or prevents the exercise of the right. A waiver of a right by the Company on one or more occasions does not operate as a waiver of that right if it arises again. The exercise of a right by the Company does not prevent any further exercise of that right or of any other right.

24.7. These Terms will be governed by and construed in accordance with the laws in force in Victoria, Australia. Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria, Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with these Terms, and waives any right it might have to claim that those courts are an inconvenient forum.