

ARA Group of Companies (Supplier)- Standard Terms and Conditions of Sale/Supply of Goods and/or Services

1. Agreement

- 1.1 These Terms apply to and form part of the Agreement between the Supplier and the Customer. They supersede any previously issued terms and conditions of sale/supply.
- 1.2 Acceptance by the Supplier to provide the Goods or Services described or referred to in any Purchase Order issued by the Customer constitutes the formation of the Agreement and is expressly subject to and conditional upon these Terms.
- 1.3 Any Purchase Order for or any statement of intent to purchase any Goods or Services, or any direction to proceed with engineering procurement, manufacture or shipment of such, shall constitute acceptance of these Terms and a representation that the Customer is solvent.
- 1.4 Any additional or different terms and conditions to the Terms provided in any communication from the Customer are rejected by the Supplier and shall not be effective or binding on the Supplier unless expressly agreed by the Supplier's authorised representative in writing.
- 1.5 None of the Supplier's agents or representatives other than a manager or officer are authorised to make any representations, statements, conditions or agreements nor is the Supplier bound by any such unauthorised actions.

2. Specification

The Goods or Services shall be supplied by the Supplier in a timely manner and in accordance with the Agreement, including any specifications set out in the Purchase Order. Where the Purchase Order does not contain any specifications, or where the specifications are ambiguous or unclear, the specifications set out in the Quotation shall apply.

3. Price

- 3.1 The Customer must pay to the Supplier the Price based on the Goods or Services requested in a Purchase Order at the then current prevailing rates of the Supplier for those Goods or Services or, at the discretion of the Supplier, the amount specified in any Quotation.
- 3.2 Any increase in the cost of delivery and/or supply of the Goods or Services between the date of the Purchase Order and the date of delivery or supply of those Goods or Services shall be borne by the Customer.
- 3.3 The Supplier may change the Price by providing written notice to the Customer.
- 3.4 Any Price quoted by the Supplier is based on the costs of labour, materials and statutory obligations applicable at the date of the Quotation. Any variations in these rates or obligations incurred by the Supplier shall be payable by the Customer.
- 3.5 The Supplier shall be entitled to charge its reasonable additional costs and fees for all delays caused as a result of the Supplier obeying any instructions given by the Customer or the Customer not fulfilling the Customer's obligations under the Agreement.

4. GST and other Taxes

- 4.1 The Price is exclusive of GST. The Customer must pay the Supplier an additional amount for any GST payable in respect of any taxable supply made under or in connection with the Agreement, provided the Supplier must provide the Customer with a tax invoice in respect of that taxable supply.
- 4.2 If there is an adjustment event in relation to the taxable supply:
 - (a) the Supplier must refund to the Customer the amount by which the GST paid by the Customer pursuant to clause 4.1 exceeds the adjusted GST on the taxable supply; or
 - (b) the Customer must pay to the Supplier the amount by which the adjusted GST on the supply exceeds the amount of GST paid pursuant to clause 4.1.
- 4.3 Any other taxes (excluding income taxes) duties, fees, charges or assessments of any nature levied by any government authority in connection with the Agreement shall be paid directly by Customer to the governmental authority concerned. If the Supplier is required by law or otherwise to pay such a levy and/or fines, penalties or assessments in the first instance, or as a result of Customer's failure to comply with any applicable laws or regulations governing the payment of such levies by Customer, the amount of any payments so made by the Supplier shall be reimbursed by Customer to the Supplier upon submission of the Supplier's invoices.

5. Property and Risk

- 5.1 All risk and liability for Goods will transfer to the Customer on delivery of Goods to the Customer or any third party who is acting on behalf of the Customer.
- 5.2 The Supplier shall remain the sole and absolute owner of the Goods until the price for the Goods has been received in full by the Supplier and, subject to the provisions of the PPSA, be entitled, in addition to the right conferred by clause 5.3(b), to retake possession of all Goods in the possession of the Customer which have been supplied by the Supplier sufficient to clear any outstanding indebtedness by the Customer to the Supplier under the terms of the Agreement and the Supplier shall not be required to distinguish between Goods which have been paid for and Goods which have not been paid for.
- 5.3 Subject to the provisions of the PPSA, until the Supplier has received payment in full of the Price for all Goods supplied by the Supplier:
 - (a) the Customer shall be bailee of the Goods for the Supplier and shall store them upon its premises separately from its own Goods or those of any other person and shall store them in a manner enabling them to be readily identifiable as Goods of the Supplier;
 - (b) the Customer grants the Supplier an irrevocable license to enter the Customer's premises and retrieve the Goods; and
 - (c) the Customer shall not sell or dispose of any of the Goods or any interest in the Goods without the prior written consent of the Supplier.
- 5.4 If the Supplier consents in writing to the sale or disposal or if any sale or disposal is made in breach of clause 5.3 and notwithstanding such breach:

- (a) the Customer shall inform any person to whom it proposes to sell or dispose of the Goods or any interest in the Goods ("Acquirer") of the Supplier's interest;
- (b) the Customer shall ensure that the terms of the sale or disposal of Goods to the Acquirer includes a term which is identical in substance to this clause 5;
- (c) notwithstanding that the payment of the price for the Goods would not otherwise have been due by the Customer, the Customer shall be obliged to pay the price for the Goods to the Supplier as soon as it receives payment from the Acquirer;
- (d) the Customer shall hold all its rights against the Acquirer on trust for the Supplier and, to the extent necessary to discharge all debts owing to the Supplier in respect of the supply of Goods or other Goods only, any proceeds it receives;
- (e) the Customer agrees that the Supplier shall be entitled to trace all and any proceeds arising from any sale or disposal of the Goods until the Customer pays the full price for the Goods to the Supplier;
- (f) the Customer agrees that the Supplier shall be entitled to trace all and any proceeds arising from any sale or disposal of the Goods until the Customer pays the full price to the Supplier for all other Goods supplied by the Supplier; and
- (g) the Customer shall, at the Supplier's request, assign its claims against the Acquirer and agrees irrevocably to appoint the Supplier and each of its officers as its attorney to give effect to and complete that assignment.

5.5 Where Goods have become Mixed Goods, the Customer agrees with the Supplier:

- (a) that the ownership of the Mixed Goods immediately passes to the Supplier, to the extent necessary to repay all moneys owing to the Supplier and to no greater extent; and
 - (b) until payment of all sums owing to the Supplier whether under this Agreement or any other contract, that the Customer shall hold the Goods as a fiduciary for the Supplier.
- 5.6 For the avoidance of doubt, subject to the PPSA, the ownership of Mixed Goods passes to the Supplier at the beginning of the single operation or event by which the Goods are converted, mixed, commingled or becomes part of Mixed Goods.
- 5.7 Where the Customer has not paid the Supplier in the manner required by these Terms:
- (a) the Customer agrees with the Supplier to keep Mixed Goods as a fiduciary for the Supplier and, unless otherwise required by the Supplier, to store Mixed Goods in a manner that clearly shows the ownership of the Supplier;
 - (b) the Customer grants the Supplier a security interest in Mixed Goods as security for any sums due to the Supplier by the Customer under the Agreement.

6. Delivery

- 6.1 Any dates for delivery of Goods or Services advised by the Supplier are approximate and are based upon the Customer providing prompt access to any area or equipment requiring the Supplier's services and prompt receipt of all the necessary information in respect of the Services required.
- 6.2 All delivery costs for Goods or Services shall be in addition to the Price unless expressly stated otherwise by the Supplier.
- 6.3 Unless otherwise agreed, all shipments are 'Ex Works' (EXW) (as defined in INCOTERMS 2010 published by the International Chamber of Commerce which may be revised from time to time) at the Supplier's premises.
- 6.4 The Supplier shall not be liable for any delay in delivery of Goods or performance of Services caused by a Force Majeure Event.
- 6.5 In the event of a delay under clause 6.4, the date of delivery or performance shall be extended for a period equal to the time lost by reason of the Force Majeure Event.

7. Payment

- 7.1 Unless otherwise specified by the Supplier in writing, payment of the Price is to be made by the Customer no later than 14 days from the date of a tax invoice for the Services and/or Goods. The Supplier may submit a detailed payment claim at intervals of one (1) month. Each payment claim shall be for Services and Goods provided up to the end of the relevant month.
- 7.2 At the Supplier's sole discretion, a deposit or pre-payment of the Price may be required.
- 7.3 Time for payment for the Goods and/or Services is of the essence. In the event an invoice is overdue, the Supplier may suspend the provision of Goods and/or Services until payment is made without incurring any liability to the Customer.
- 7.4 Payment of the Price and any other payment must be made in cleared funds by cash, cheque, bank transfer, credit card, direct debit, or by any other method as agreed between the Customer and the Supplier.
- 7.5 In the event of bankruptcy or insolvency of the Customer or in the event any proceeding is brought against the Customer, voluntarily or involuntarily, under the bankruptcy or any insolvency laws, the Supplier shall be entitled to cancel any Purchase Order outstanding at any time during the period allowed for filing claims against the Customer and shall receive reimbursement for its reasonable and proper cancellation charges.
- 7.6 The Supplier at its option may retain possession of equipment repaired, modified, inspected, maintained or serviced under this Agreement until the Price is paid in full. If the Price is not paid within ninety (90) days from the date of the relevant tax invoice, the Supplier may, upon not less than seven (7) days written notice by registered mail to the Customer at the Customer's last known address, sell the equipment at public or private sale and apply the net proceeds to the outstanding Price.
- 7.7 Interest on overdue invoices owed by the Customer accrues from the date when payment becomes due, until the date of payment, at a rate of ten percent (10%) per annum calculated daily.

- 7.8 The Customer indemnifies the Supplier from and against all Loss incurred by the Supplier in pursuing any sums owned by the Customer to the Supplier.
- 8. Security**
- 8.1 The Customer consents to the Supplier creating and maintaining a registration on the Personal Property Securities Register ("Register") in any required form, in relation to any security interest contemplated or created by the Agreement, including a security interest as defined in the PPSA.
- 8.2 The Customer agrees to sign any necessary documents and provide all reasonable assistance and information to facilitate the registration and maintenance of a security interest on the Register if required by the Supplier. The Supplier reserves the right to register a financing statement or financing change statement in respect of any security interest and the Customer waives the right to receive notice of a verification statement in relation to any registration of a security interest on the Register, by way of clause 8.1 or 8.2, in respect of any Goods supplied.
- 8.3 The Customer undertakes to do any and all acts that are reasonably required by the Supplier so as to:
- allow the Supplier to create and maintain a perfected security interest (including a purchase money security interest) pursuant to the PPSA in respect of any Goods supplied and any and all proceeds of those Goods;
 - allow the Supplier to register a financing statement or financing change statement;
 - ensure that the Supplier maintains its secured position under the PPSA;
 - not register a financing statement or financing change statement without the Supplier's prior written consent; and/or
 - not register or commit to the register of a financial statement or financing change statement in respect of the Goods, in favour of a third party, without the Supplier's prior written consent.
- 8.4 The Supplier and Customer agree that no information (as defined in Section 275(1) of the PPSA) will be provided to an interested person or person requested by an interested person. This clause 8.4 may be waived by providing prior written notice to the Supplier authorising the disclosure of the above information to a specified party.
- 8.5 In the event that the Agreement is subject to Chapter 4 of the PPSA:
- the Supplier and Customer agree that, pursuant to Section 115(1) of the PPSA, the Customer waives Sections 95, 96, 118, 121(4), 125, 130, 132(3)(d), 134, 135, 142 and 143 of the PPSA; and
 - the Supplier and Customer agree that, pursuant to Section 115(7) of the PPSA, Sections 127, 129(2), 129(3), 130(1), 132, 134(2), 135, 136(3), 136(4), 136(5) and 137 of the PPSA do not apply to the Agreement.
- 8.6 The Agreement (including clauses 5 and 6 of these Terms) is a security agreement for the purposes of the PPSA. For the avoidance of any doubt, collateral, for the purposes of Section 20(2) of the PPSA includes, but is not limited to, Goods (as described in the Agreement) or Goods provided by the Supplier to the Customer at any subsequent time.
- 8.7 The Supplier may apply amounts received in connection with the sale of Goods to satisfy obligations secured by security interests contemplated or constituted by the Agreement, at the Supplier's absolute discretion.
- 8.8 Despite anything to the contrary contained in these Terms or any other rights which the Supplier may have howsoever:
- The Customer charges all of its estate and interest in land, personal property or other property in favour of Supplier to secure all monetary and other obligations under the Agreement.
 - The Customer acknowledges and agrees that the Supplier entitled to register securities for the purposes of clause 8.8(a) (including an absolute caveat) with any applicable security registries, provided that those registered securities must be withdrawn once all payments and other monetary obligations payable under the Agreement have been met.
 - The Customer irrevocably appoints the Supplier as the Customer's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 8.
- 9. Insurance**
- 9.1 The Supplier shall, until acceptance of the Services by the Customer and/or completion of the performance of the Services, at its own cost and in a form acceptable to the Customer, insure the Services and any materials provided by the Customer to the Supplier pursuant to clause 12 for any loss of or damage to the Services and/or such materials.
- 9.2 The Supplier shall have in effect for the duration of the Agreement the following insurances:
- those which the Supplier is required to hold by law; and
 - Public and Products Liability insurance for an amount of at least \$20,000,000.00 in the aggregate.
- 10. Warranty**
- 10.1 The Supplier warrants to the Customer that:
- the Services to be performed under the Agreement will be performed with reasonable care and skill in accordance with any specifications; and
 - the Goods to be provided under the Agreement will be free from material defects and will be of the kind and quality, stipulated in the Agreement ("Warranty").
- 10.2 The Warranty shall apply only to defects appearing within six (6) months from the date of completion of the Services or provision of the Goods ("Warranty Period"), following which the Customer is deemed to have accepted the Services or Goods. The conditions of any tests to Goods or Services provided by the Supplier shall be mutually agreed upon and the Supplier shall be notified of, and may be represented at, all tests that may be made.
- 10.3 If the Supplier breaches the Warranty, provided the Customer has given the Supplier written notice of such breach within the Warranty Period, the Supplier's liability is limited to the remedies under clauses 10.6(a) or 10.6(b), provided that any Goods to be returned must be returned at the Customer's cost. Where the Customer is a 'consumer' as defined in the Competition and Consumer Act 2010 (Cth) or the Fair Trading Act of any State or Territory in Australia (as applicable), then the Customer is also entitled to a refund of the Price paid for the relevant Goods or Services. No interest shall be payable by the Supplier on any such refund.
- 10.4 The liability of the Supplier for any Loss incurred by the Customer as a result of the Warranty breach (whether the claim is based on contract or negligence) will not in any case exceed the cost of correcting defects in the relevant Services and/or Goods. The foregoing shall constitute the exclusive remedy of the Customer and the exclusive liability of the Supplier.
- 10.5 Any condition, term, guarantee or warranty which would otherwise be implied in the Agreement is hereby excluded to the full extent permitted by law.
- 10.6 Where legislation implies in the Agreement any condition, term, guarantee or warranty ("Mandatory Warranty"), and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such Mandatory Warranty, the Mandatory Warranty is deemed to be included in the Agreement and the liability of the Supplier for any breach of such Mandatory Warranty is limited, at the absolute discretion of the Supplier, to one or more of the following:
- if the breach relates to the Goods:
 - the replacement of the Goods or the supply of equivalent Goods;
 - the repair of such Goods;
 - the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
 - the payment of the cost of having the Goods repaired; and
 - if the breach relates to the Services:
 - the supplying of the Services again; or
 - the payment of the cost of having the Services supplied again.
- 10.7 The provisions of this clause 10 shall survive termination of the Agreement for any reason.
- 11. Limitation of Liability**
- 11.1 The Supplier's liability under any claim by the Customer in respect of this Agreement or matters associated with this Agreement is limited to the portion of the Price allocable to the Goods or Services which give rise to that claim, including negligence for any Loss or arising out of connected with, or resulting from this Agreement, or from the performance or breach thereof, or from the design, manufacture, sale, delivery, resale, installation, technical direction of installation, inspection, repair, test modification, operation or use of any equipment, material or components covered by or furnished under this Agreement.
- 11.2 The Supplier is not liable for any:
- loss of profits or revenue, loss of use of the equipment or any associated equipment, facilities or services downtime costs;
 - special or consequential loss or damages; or
 - for any claims by third parties against the Customer for such loss or damages.
- 11.3 The Supplier does not give any warranty with respect to (without limitation):
- breaches of the Warranty not reported to the Supplier within the Warranty Period;
 - failures or damage in respect of the Services due to misapplication, abuse improper installation or abnormal conditions of temperature, dirt or corrosive matter;
 - failure in respect of the Services due to operation (either intentional or otherwise) above rated capacities or in an otherwise improper manner;
 - Goods which have been in any way tampered with or altered by anyone other than an authorised representative of the Supplier;
 - Goods damaged in shipment or otherwise without fault of the Supplier, and/or expenses incurred by Customer in an attempt to repair or rework any alleged defective Goods.
- 11.4 The Customer agrees to indemnify the Supplier from and against:
- any Loss arising from the injury or death of any person caused by an act, omission or negligence or otherwise of the Customer, the Customer's employees, servants and agents whilst the Supplier performs the Services and supplies the Goods;
 - any Loss caused to the Supplier, whether such Loss was caused by the act, default or negligence on the part of the Supplier or otherwise.
- 11.5 The Customer shall assume all risks and liabilities for and in respect of the provision of Goods and/or Services and for injuries to or death of persons and damage to property howsoever arising and the Customer indemnifies the Supplier from and against:
- the loss of or damage to any Goods for which payment of the Price has not yet been made in full, whether by fire, theft, accident, seizure, confiscation or otherwise whilst in the Customer's custody possession or control; and
 - all other Loss howsoever arising incurred as a result of or in connection with the provision of the Goods and/or Services.
- 12. Materials Supplied by the Customer**
- 12.1 The Customer shall provide to the Supplier any patterns, designs, specifications, drawings, samples, technical information, specified in the Agreement (whether in electronic format or otherwise) or which the Customer has agreed in writing to provide to enable the Supplier to supply the Goods and/or Services ("Materials").
- 12.2 All Materials and the Customer's Intellectual Property within such Materials (if any), remain the property of the Customer.
- 12.3 The Supplier will not use the Materials for any purpose other than to the extent required to supply the Goods and/or Services to the Customer.
- 13. Intellectual Property**
- 13.1 Other than as otherwise agreed between the Parties:
- the Supplier hereby grants to the Customer a perpetual, irrevocable, non-exclusive, royalty-free, transferable licence (with the right to sub-license) to

- use all Intellectual Property (whether owned by the Supplier or not) which is used by the Supplier in connection with the performance Services under the Agreement;
- (b) all Intellectual Property developed by the Supplier in connection with the performance of the Services under the Agreement vests in the Supplier; and
- (c) the Customer agrees to enter into and/or execute any document reasonably required to give effect to the provisions of this clause 13.1.
- 13.2 The Supplier warrants that:
- (a) the supply of Services by the Supplier to the Customer and the license granted by the Supplier pursuant to clause 13.1 does not infringe the Intellectual Property rights of any third party; and
- (b) the Services are not subject to any Intellectual Property rights of any third party that in any way restrict the rights of the Customer or its Customers to use or sell the same.
- 14. Termination and Cancellation**
- 14.1 The Customer may cancel any Purchase Order prior to provision of the Goods and/or Services under that Purchase Order by written notice to the Supplier and upon payment to the Supplier of any costs incurred by the Supplier together with such reasonable and proper cancellation charges as are determined by the Supplier.
- 14.2 The Supplier may suspend or terminate the Agreement immediately:
- (a) upon giving written notice to the Customer in the event that the Customer is in default of a material term of the Agreement and fails to remedy such default within fourteen (14) days of notice from the Supplier to do so, if such default is capable of remedy;
- (b) the Customer has failed to pay an invoice by its due date; or
- (c) if the Customer becomes insolvent, is made bankrupt, is placed into external administration or liquidation or has a receiver or other controller appointed over its assets.
- 14.3 Termination of the Agreement pursuant to this clause 14 shall be without prejudice to the rights of either party accruing prior to termination.
- 15. Dispute Resolution**
- 15.1 If a Dispute arises either party may by hand or registered post give the other party written notice of the Dispute identifying and providing details of the Dispute and entitled Dispute Notice ("Dispute Notice").
- 15.2 Within seven (7) days of receipt of a Dispute Notice, representatives of the parties having authority to bind the parties shall confer to seek to resolve the Dispute or agree on a method of doing so and whether that method shall be binding. If a resolution or method of resolution has not been agreed within twenty-one (21) days of the service of Dispute Notice, the Chief Executive Officers (or equivalent) of the parties shall confer for the same purpose as the parties' representatives. All aspects of such conference(s) shall be subject to "without prejudice" privilege.
- 16. General**
- 16.1 The Supplier shall have no liability to the Customer in respect of any matter in connection with the Agreement unless the claim together with full particulars thereof is lodged with the Supplier within fourteen (14) days of the occurrence of the event(s) or circumstance(s) on which the claim is based.
- 16.2 If any provision or part of any provision of the Agreement is unenforceable, such unenforceability shall not affect any other part of such provision or any other provision of the Agreement.
- 16.3 The Supplier may alter, amend, revise or change any terms of the Agreement with notice given to the Customer of any such alteration, amendment, revision or change. The Agreement (as amended from time to time) shall apply to all Services performed and all Goods supplied by the Supplier for the Customer and shall comprise the entire agreement between the parties notwithstanding any other terms and conditions which may be supplied by the Customer.
- 16.4 Any waiver by the Customer of strict compliance with any provision of the Agreement shall not be effective unless in writing and signed by an authorised officer of the Customer.
- 16.5 The Agreement shall be governed by and construed in accordance with the laws in force in New South Wales, Australia and the parties submit to the exclusive jurisdiction of the courts of New South Wales, Australia.
- 16.6 No provision of the Agreement shall be construed adversely against one party solely on the basis that that party was responsible for the drafting of that provision.
- 17. Definitions**
- In these Terms:
- (a) "Agreement" means the agreement between the Supplier and the Customer for the provision of Goods or Services comprising (a) the Purchase Order; these Terms; and (c) any Quotation.
- (b) "Customer" means the customer (or any person acting on behalf of and with the authority of the customer) as described on any Purchase Order or Quotation, including their successors or permitted assigns.
- (c) "Dispute" means a dispute between the parties which has arisen in connection with the subject matter or interpretation of the Agreement, including a dispute concerning a claim in tort, under statute, or on any other basis in law or equity available under the law governing the Agreement.
- (d) "Force Majeure Event" means (a) causes beyond the Supplier's reasonable control; or (b) acts of God, acts of the Customer, acts of civil or military authority, priorities, fire, strikes or other labour disturbances, floods, cyclones, epidemics, war, riots, delays in transport or car shortages; or (c) causes beyond the Supplier's reasonable control resulting in it being unable to obtain necessary labour, drawings, materials components or manufacturing facilities.
- (e) "Goods" means goods, materials, parts or products described in a Purchase Order or Quotation.
- (f) "Intellectual Property" means any intellectual or industrial property whether protected by statute, at common law or in equity, including any trade mark, patent, invention, copyright, or design right (whether or not registrable), in any design, specification, process, technique, software, know how, trade secret, technical information, financial information, business method and confidential information.
- (g) "Loss" means any loss (including but not limited to direct loss, indirect loss, consequential loss, loss of anticipated profits and/or loss of business opportunity), liability, damage (including but not limited to any damages or compensation and/or any damage to reputation and damage to property), cost or expense (including legal costs on a full indemnity basis) of whatever kind and however it arises.
- (a) "Mixed Goods" means where: (a) the Customer makes a new object from the Goods, whether finished or not; or (b) the Customer mixes or otherwise combines the Goods with other articles, goods or products; or (c) the Goods become part of another product.
- (h) "PPSA" means the Personal Property Securities Act 2009 (Cth) (as may be amended or replaced from time to time).
- (i) "Price" means the price payable for the Services and/or Goods in accordance with clause 3.1.
- (j) "Purchase Order" means any purchase order, work order, work authorisation or any other form requesting for the supply of Goods and/or Services from the Supplier (whether oral or written).
- (k) "Quotation" means any quotation provided by the Supplier to the Customer in respect of a Purchase Order.
- (l) "Related Bodies Corporate" is defined in Section 9 of the Corporations Act 2001 (Cth) (as may be amended or replaced from time to time).
- (m) "Services" means all services or described in a Purchase Order or Quotation.
- (n) "Supplier" means the ARA Group Pty Limited (ABN 47 074 886 561) and its Related Bodies Corporate.
- "Terms" means these Standard Terms and Conditions of Sale/Supply of Goods and/or Services as amended from time to time.