

TERMS AND CONDITIONS OF SALE

These are the terms and conditions of sale (**Terms**) that apply to all sales of products and associated products including components of products (**Goods**) and or services including design, engineering work, installation, commissioning, alterations, servicing and repair (**Services**) by PRECISION METALS QUEANBEYAN PTY LTD ABN 61 079 229 897 trading as SRA Solutions (**PMQ**) and any of its subsidiaries or business divisions (all of which are referred to as and included under the term “**PMQ**”) to any person, firm or company placing an order with PMQ for the purchase of any Goods or Services (**Customer**) including pursuant to a Credit Account or Quotation (as defined below).

1. DEFINITIONS AND INTERPRETATION

1.1. In these Terms:

1.1.1. **Australian Consumer Law** means the Australian Consumer Law found in Schedule 2 of the *Consumer and Competition Act 2010 (Cth)*.

1.1.2. **Business Day** means a day that is not a Saturday, Sunday or public holiday in the place where an act is to be performed, a notice is to be received, or payment is to be made.

1.1.3. **Claim** means any claim, demand, suit, execution, expenses, verdict, judgment, investigation, obligations, action, cause of action, proceeding or prosecution of any kind, whether in contract, tort (including negligence), at common law, in equity, under statute or otherwise however arising.

1.1.4. **Contract** means the contract of sale formed between PMQ and the Customer for the supply of Goods and or Services by PMQ to the Customer that comes into being:

(a) for Customers who hold a Credit Account with PMQ, when the Customer's Application for Trade Credit Account is accepted by PMQ; or

(b) for any other Customer, when a Quotation is accepted in writing by the Customer, or an Order for Goods or Services by the Customer is accepted by PMQ.

1.1.5. **Credit Account** means a facility for the order of Goods or Services on credit established on PMQ's approval of an Application for Trade Credit Account by the Customer.

1.1.6. **Customer** as defined above includes any person, firm or company placing an order with PMQ for the purchase of any Goods and Services and or to whom a Quotation is addressed and/or any person who accepts the Quotation, and includes, for Credit Accounts, the Customer named in the Application for Trade Credit Account. If the Customer is comprised of more than one person then “Customer” means those persons collectively and each of them individually and the obligations and liabilities on the part of the Customer in these Terms binds all of them jointly and each of them severally.

1.1.7. **Default Event** if any of the following occurs:

(a) the Customer fails to pay for any Goods or Services or any other sum payable under these Terms on or before the due date for payment of that sum;

(b) the Customer fails to Order the minimum amount of Goods required under any Quotation or Order that specifies for minimum quantities for any Order or period;

(c) the Customer commits another material breach of these Terms or any other Contract in writing with PMQ (including but not limited to the terms of a Credit Account) and fails to remedy that breach within five (5) Business Days of written request by PMQ; or

(d) the Customer becomes insolvent within the meaning of the *Corporations Act 2001 (Cth)* including where an administrator, receiver (including receiver and manager), liquidator (including provisional liquidator) is appointed to the assets of the Customer or the Customer is or is deemed to be, bankrupt or insolvent under any other law.

1.1.8. **Force Majeure Event** means any event or circumstance that:

(a) is not within PMQ's reasonable control;

(b) PMQ are not reasonably able to prevent or overcome by the exercise of reasonable care; and

(c) causes PMQ to fail to perform any of PMQ's obligations under the Contract; but does not include any event or circumstance that arises as a result of any lack of funds for any reason or any other inability to pay; or negligent act or omission by PMQ.

1.1.9. **GST and GST Law** has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (as amended).

1.1.10. **Goods** as defined above includes goods supplied or to be supplied to the Customer including goods manufactured or modified at the Customer's request.

1.1.11. **Goods Warranty** has the meaning given to it in clause 8.

1.1.12. **Intellectual Property Rights** means all forms of intellectual property rights (whether registered or unregistered) in copyright, designs, patents, trade marks, domain names, trade secrets, know-how, confidential information, and all other similar proprietary rights which currently exist and/or are recognised in the future.

1.1.13. **Liability** means any legal liability, whether arising in contract, tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise.

1.1.14. **Loss** means losses, damages, liabilities, charges, expenses, compensation, fine, penalty, payment outgoings or costs and all related costs and expenses (including reasonable legal fees and reasonable costs of investigation, litigation, settlement, judgment, appeal, interest and penalties) of any nature or kind, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

1.1.15. **Order** means any order for or any written statement of intent or offer to purchase any Goods or any direction to proceed with engineering, procurement, manufacture or shipment of Goods placed by the Customer with PMQ and includes the Customer's acceptances of a Quotation or an Contract for standing or regular supply between the Customer and PMQ.

1.1.16. **PMQ** means Precision Metals Queanbeyan Pty Ltd ACN 079 229 897 (ABN 61 079 229 897).

1.1.17. **PPSA** means the *Personal Property Securities Act 2009 (Cth)*.

1.1.18. **Quotation** means any written proposal or quotation that PMQ gives to the Customer with respect to the proposed supply of Goods.

1.1.19. **Services** as defined above includes any services to be rendered by PMQ to the Customer, whether as a stand alone purchase of services or in connection with the supply of Goods.

1.1.20. **Specifications** means specifications, drawings, particulars of weights and dimensions and any technical information including associated documentation relating to Goods or Services to be supplied by PMQ.

1.1.21. **Terms** means this document titled Terms and Conditions of Sale.

TERMS AND CONDITIONS OF SALE

1.1.22. **Website** means the website of PMQ found at: www.srasolutions.com.au and any other website of any business division of PMQ on which information relating to the Goods or Services by PMQ may be found, but does not include the website of any independent distributor or reseller.

1.2. In these Terms:

- 1.2.1. headings are for convenience only and do not form part of these terms and conditions of sale;
- 1.2.2. reference to the singular includes the plural and the plural includes the singular;
- 1.2.3. reference to one gender includes the others.
- 1.2.4. a person denotes an individual or corporation or other legal entity as applicable;
- 1.2.5. references to a party will include as the context requires that party's respective executors, administrators and successors;
- 1.2.6. references to the Contract include any annexures and schedules to the Contract and any other document expressly incorporated as part of the Contract; and
- 1.2.7. if the day on which any act, matter or thing is to be done under or pursuant to the Contract is not a Business Day, that act, matter or thing may be done on the next Business Day.

2. CONTRACT TERMS

- 2.1. Any Contract however arising will be subject to these Terms unless PMQ otherwise expressly agrees in writing.
- 2.2. These Terms supersede and exclude all prior discussions, representations (contractual or otherwise) and arrangements relating to the supply, performance or expected results of the Goods and Services except to the extent agreed in writing by PMQ.
- 2.3. No terms or conditions introduced by the Customer on any recipient created invoice, receipt or other document issued by the Customer shall be deemed included in the terms of Contract unless accepted in writing by PMQ.
- 2.4. To the extent that PMQ accepts additional terms in writing, including as part of any Order, Quotation or the Customer's Credit Account, such terms shall override these Terms to the extent of any inconsistency.
- 2.5. Orders may be subject to additional terms to these Terms, for example:
 - 2.5.1. Orders made through a Website will be subject to the terms of use of the Website;
 - 2.5.2. Orders made through an agent, distributor, reseller or other sales partner may be subject to such further terms as advised by the agent, distributor, reseller or other sales partner; and
 - 2.5.3. Orders of Goods and Services inclusive of third party manufactured Goods or subcontracted Services may be subject to intellectual property license restrictions, warranty restrictions and other terms as required by the third party provider.

3. QUOTATIONS & ORDERS

- 3.1. PMQ may issue a catalogue or price list for Goods and Services on any Website or via any distributor or other agent. Any such description of Goods and pricing will be indicative only, may be updated from time to time without notice, and remains subject to confirmation at Order point at all times.
- 3.2. PMQ may provide the Customer a Quotation at the Customer's request.
- 3.3. Unless otherwise agreed by PMQ, a Quotation is valid until 30 days after the date it was issued.
- 3.4. PMQ may withdraw or vary a Quotation at any time before it is accepted by notice to the Customer.
- 3.5. A Quotation is an invitation to treat and does not constitute an offer by PMQ. The Customer's

acceptance of a Quotation in writing or the making of an Order pursuant to a Quotation or in any other way submitted, constitutes an offer to PMQ to supply Goods or Services as described in the Order.

- 3.5.1. Orders are subject to acceptance by PMQ and whilst PMQ will endeavour to accept all Orders that it reasonably can, PMQ reserves the right to refuse any Order for any reason or, in its discretion, request a variation in the terms, such as quantity or lead time.
 - 3.5.2. The credit limit of Credit Accounts or any other outstanding Orders by the Customer is at PMQ's discretion, and PMQ reserves the right to reject Orders which cause the Customer's Credit Account or outstanding balance to PMQ to exceed the sum acceptable to PMQ in its absolute discretion.
 - 3.6. For Orders that require a deposit or other upfront payment, PMQ's acceptance of the Order is also conditional upon receipt of the deposit or payment by PMQ.
 - 3.7. Where PMQ stipulates a manner for the Customer to make Orders, the Customer must submit Orders in the manner specified, and PMQ reserves the right to reject Orders which are not made in such manner or charge an administration fee for the processing of special Orders.
 - 3.8. After PMQ's acceptance of an Order:
 - 3.8.1. no change in the terms of the Order including Specifications shall bind PMQ, unless PMQ expressly agrees to the change in writing, which may be the subject of a variation in the terms of supply including the price and delivery time, as advised by PMQ;
 - 3.8.2. cancellations are at PMQ's discretion; and
 - 3.8.3. if the Customer cancels the Order after acceptance, the Customer will reimburse PMQ for any Loss incurred by PMQ in relation to the supply or proposed supply of the Goods and or Services.
 - 3.9. For the avoidance of doubt, where the Customer's Contract lists minimum order quantities for any Order or any specified period, the Customer is liable to purchase the specified quota of Goods or Services and any alternative arrangement shall be at PMQ's absolute discretion.
- ### 4. PRICING
- 4.1. Prices in a Quotation are applicable to that Quotation only.
 - 4.2. Subject to clause 4.3, prices in a Quotation are based on PMQ's costs as at the Quotation date and shall remain firm only until expiry of the Quotation unless withdrawn earlier by PMQ.
 - 4.3. The Customer acknowledges and agrees that:
 - 4.3.1. Except as otherwise stated in a Quotation or Order, prices are quoted exclusive of GST and any other duties, imposts, taxes (including any other sales taxes) and similar amounts payable in relation to the sale or supply of any Goods and or Services by PMQ to the Customer, and the Customer must pay such imposts as shown on the invoice issued by PMQ;
 - 4.3.2. GST, import duty, or any other statutory charges (if any) included in a Quotation are based on the rates and methods of assessment in force as at the Quotation date and may be increased by PMQ by notice to the Customer in accordance with any changes in the GST Law or other relevant law; and
 - 4.3.3. Furthermore, PMQ reserves the right to vary the quoted price of imported Goods to reflect any increase in rates of currency exchange, freight, insurance and cartage on the declared value of such imported components of equipment that may occur between the relevant Quotation date and the final invoice date.

TERMS AND CONDITIONS OF SALE

4.4. Where a price change under clause 4.3.3 increases the price of an existing Quotation or Order by 20% or more, the Customer is entitled to cancel the Quotation or Order by written response to PMQ within two (2) Business Days of PMQ's price change notification and in such case the Customer shall only be required to pay for Goods actually delivered by PMQ at the prior agreed pricing. If the Customer does not cancel a Quotation or Order within the time specified in this clause, the Customer is taken to have accepted the price change.

4.5. Except as otherwise stated in a Quotation or Order, prices of Goods are quoted exclusive of any Services, including installation, training, or other Services associated with the acquisition of the Goods. Such Services may be from time to time available for purchase separately in connection with the purchase of any Goods.

4.6. Except as otherwise stated in a Quotation or Order, prices of Goods are quoted inclusive of delivery to the Customer's nominated delivery address in the Quotation or Order. Any change of address may necessitate a variation in price.

5. TERMS OF PAYMENT

5.1. Payment for Goods and Services must be made in accordance with the payment terms outlined in the Customer's Order, the relevant Quotation or specific terms of Credit Account (in this order of priority). Where not stated, invoicing will be made on Goods dispatch or when Services are rendered, and payment terms are thirty (30) days from the date of invoice unless otherwise specified in the invoice.

5.1.1. For the avoidance of doubt, PMQ may, in its absolute discretion, invoice Goods when ready for delivery if delivery is delayed by the Customer for a period exceeding 7 days.

5.1.2. PMQ may, at its absolute discretion, charge interest on all overdue amounts at the interest rate of two percent (2%) per month calculated daily on the outstanding balance and compounded monthly from the due date until full payment is received.

5.1.3. Certain forms of payment may be the subject of an administration percentage fee, credit card or bank charge as published by PMQ or advised to the Customer from time to time.

5.1.4. All payments by the Customer must be made without any deduction, set-off or counterclaim, except as otherwise agreed in writing by PMQ.

5.1.5. All invoices and statements will be issued by email, to the email address nominated by the Customer. Postage of invoices, statements or other materials may attract an additional fee.

6. DELIVERY

6.1. PMQ will use all reasonable endeavours to deliver Goods and or Services to the Customer as soon as possible having regard to PMQ's ordinary manufacture and delivery time frames.

6.2. The Customer agrees that, except as otherwise agreed in writing by PMQ, delivery dates shall be considered estimates only and PMQ does not guarantee its ability to supply Goods and or Services by any specified time or at all.

6.3. Delivery of the Goods shall be deemed to have occurred:

6.3.1. for delivery arranged by PMQ, when the Goods arrive at the Customer's nominated address for delivery;

6.3.2. for Goods made available for collection or delivery arranged by the Customer through the Customer's own carrier, when the Goods are collected from PMQ's nominated collection place;

and the Goods shall thereafter be at the Customer's risk.

6.4. The Customer must:

6.4.1. ensure that an agent of the Customer is available to accept delivery and or make collection of the Goods (as applicable) when notified by PMQ; and

6.4.2. advise PMQ of any likely delays in accepting delivery of the Goods from the estimated date agreed by the parties at least two (2) weeks prior to the scheduled delivery date.

6.4.3. PMQ reserves the right to charge a storage fee or re-delivery fee (as advised by PMQ) on account of delivery not being able to be effected due to any delay or other act or omission on the part of the Customer.

6.4.4. Without limiting the foregoing, if the Customer or its representative are not present at a delivery by PMQ, PMQ may unload the Goods at the agreed place for delivery, after which PMQ will no longer be responsible in any way for the Goods.

6.5. If at the Customer's request, a delivery vehicle crosses the kerb line in the course of making a delivery, the Customer:

6.5.1. is responsible for providing safe and adequate access for the vehicle, accompanying persons and the Goods;

6.5.2. must pay for all damage and injury to any person and to any public or private property which may result; and

6.5.3. is responsible for any costs associated with enabling the delivery vehicle entry and exit the delivery site.

6.6. PMQ, at its discretion, may deliver the Goods on pallets or timber packaging, which upon delivery become the Customer's responsibility.

6.7. PMQ may, where it is convenient for PMQ to do so, deliver Goods in instalments and in respect of which PMQ may separately invoice the Customer for payment for each delivery instalment (each of which shall be taken to be the subject of a separate and distinct contract between the parties).

7. DEFECTS AND OTHER RETURNS

7.1. The Customer has the right to return Goods that are defective, or which are the subject of incorrect delivery by PMQ, for example mis-shipment or mis-pick.

7.1.1. PMQ warrants that the Goods are free from material defects except such defects as normally being regarded as being commercially acceptable on the terms of the Goods Warranty outlined in clause 8 below or a set out in any warranty statement issued by PMQ for any specific Goods, such warranty statement to override the terms of this clause 7 and clause 8 to the extent of any inconsistency.

7.2. Return of Goods due to change of mind including excessive or incorrect Order by the Customer is at PMQ's absolute discretion and, should it be accepted, may be subject to such restocking fee as advised by PMQ. The Customer acknowledges that PMQ reserves the right to decline any return of customised or configured Goods.

7.3. The Customer further acknowledges that there may be minor inconsistencies between batches of Goods (for example in colour) and this will not be considered a defect in the Goods.

7.4. For the purpose of defect, quality concerns or other return requests:

7.4.1. The Customer must submit its request to PMQ via email at enquiry@srasolutions.com.au. The Customer must not return Goods to any distributor or warehouse facility of PMQ without first obtaining instructions to do so from PMQ.

7.4.2. The request must be submitted:

TERMS AND CONDITIONS OF SALE

- (a) for defects identifiable through a careful inspection of the Goods on delivery, within two (2) Business Days of delivery; or
 - (b) for all other defects, including warranty claims, within two (2) Business Days of discovery of the defect;
 - (c) and the Customer acknowledges that acceptance of claims outside these time frames shall be in PMQ's absolute discretion.
- 7.4.3. Reported defects are subject to verification. The Customer must provide such evidence, including video footage, as reasonably requested by PMQ, and must permit a representative of PMQ to attend the Customer's premises to inspect the Goods if needed.
- 7.4.4. Except for returns due to defect or error by PMQ, inspection, repairs or return of Goods (if accepted) will be at the Customer's cost.
- 7.4.5. All returns are the subject of verification that the Goods have been held according to the requirements of these Terms and any instructions supplied by PMQ, including there being no damage to the Goods (including packaging) other than as described in the accepted returns request.
- 7.5. For the avoidance of doubt, the Customer remains responsible for all risk in the Goods until they are received by PMQ.
- 7.5.1. PMQ may at all times in its discretion elect to refund the price of Goods rather than accept a return.
- 8. GOODS BASE WARRANTY TERMS**
- 8.1. This Goods Warranty applies to all Goods supplied by PMQ in addition to any other warranties or rights that a Customer may have at law, including under the Australian Consumer Law (if applicable).
- 8.2. This Goods Warranty does not apply to any aspects of packaging of the Goods that does not affect the saleability or performance of the Goods.
- 8.3. This Goods Warranty does not apply to third party goods and accessories supplied with the Goods such as software which may be governed by separate conditions.
- 8.4. The Goods Warranty extends for a period of time which is defined in the PMQ Warranty Statement in effect at the time of sale.
- 8.5. PMQ will, during the Goods Warranty period and subject to the limitations stated below, repair or replace at its option, any component or part of the Goods which its examination shows to be defective.
- 8.6. PMQ's obligations under this Goods Warranty are limited (to the extent permitted by law) to repairing or furnishing a replacement part from its nearest nominated spare parts outlet to replace any part which has proven to have been defective.
- 8.7. A replacement part supplied by PMQ during the Goods Warranty period will be covered by the Goods Warranty for the unexpired portion of the original warranty or for a period of ninety (90) days from the date of installation of the replacement part, whichever is later.
- 8.8. Inspection, return and repair of Goods subject to this Goods Warranty is subject to the terms of clause 7.2 and 7.5.
- 8.9. The Goods Warranty will be immediately voided in the event of:
 - 8.10. the matters specified in clause 17.4; and
 - 8.10.1. any other exclusions stipulated in any warranty document issued by PMQ for the Goods.
- 9. INSTALLATION, SERVICE AND REPAIR SERVICES**
- 9.1. This clause 9 contains additional terms applicable to installation, servicing and repair Services performed by PMQ.

- 9.2. Only repair Services under warranty will be provided free of charge to the Customer, all other servicing and repairs will be at the Customer's cost.
- 9.3. PMQ may at all times subcontract installation, servicing and repair Services to any third party authorised installer or repairer.
- 9.4. The Customer must ensure that the area where the Goods are to be installed is free and clear so as to allow any and all machinery associated with the installation to enter the site and complete such installation without hindrance or any risk of injury to the installer or their equipment.
- 9.5. The Customer is liable for the cost of all labour, equipment or other material provided and dispatched by PMQ due to a postponement or cancellation of access to the relevant job site.
- 9.6. The Customer must ensure that the area where the Goods are installed allows for adequate access for the purpose of carrying out any necessary repairs or servicing of the Goods.
- 10. COMMISSIONING**
- 10.1. This clause 10 contains additional terms applicable to commissioning Services performed by PMQ.
- 10.2. PMQ may at all time subcontract commissioning Services to any third party authorised contractor.
- 10.3. The Customer must have the Goods installed and all auxiliary services operative in accordance with PMQ's instructions prior to requesting PMQ to commission the Goods (if included in the Quotation).
- 10.4. If upon arrival on site PMQ's personnel find that the Goods are not ready for commissioning, all extra costs incurred, including costs of transportation and accommodation, will be charged to the Customer's account and the Customer must pay any such costs as invoiced by PMQ.
- 10.5. PMQ's costs for carrying out commissioning are based on PMQ's normal working hours. Overtime rates and site allowance will be charged to the Customer's account and the Customer will pay any such costs as invoiced by PMQ.
- 11. NOISE & VIBRATION**
- 11.1. The Customer is responsible for selecting an appropriate location for the installation of Goods so as not to create a noise nuisance.
- 11.2. PMQ is not responsible for any noise and/or vibration emanating from the Goods unless specifically provided for in the Quotation.
- 11.3. Except where expressly guaranteed in writing by PMQ, any noise and vibration performance figures given by PMQ, including in any product catalogue or generic Specifications advice, are estimates only, and are not part of these Terms, any warranty or any representation by PMQ.
- 11.4. Any noise and vibration figures, including those guaranteed in writing, remain subject to the advised tolerances and limitations applicable to such figures, and the Goods being operated in a standard environment, or for Goods manufactured to Specification, the manner, conditions or other information advised by the Customer.
- 11.5. Any guarantee of noise or vibration figures is voided immediately upon any alteration to the Goods by the Customer, including installation of fixtures, fittings, additional goods or accessories to the exterior or interior of the Goods.
- 12. OPERATING MANUALS**
- 12.1. PMQ may supply to the Customer no more than three copies of operating instruction manuals for the Goods. A charge may apply on request for additional copies of such manuals.

TERMS AND CONDITIONS OF SALE

- 12.2. Any manuals are provided for general information only and assume the Goods will be operated in standard conditions. The Customer acknowledges that PMQ is not responsible for, and accepts no Liability in relation to, the Customer's conduct in connection with any information set out in such manuals.

13. PRODUCT CHANGES

- 13.1.1. Subject to the remaining provisions of this clause, the Customer acknowledges that PMQ may discontinue and or make changes to the specifications of any of its available products and services, at any time in its discretion, with or without notice to customers.
- 13.1.2. Subject to the Customer's rights under law, pursuant to PMQ policy of continuous product development and improvement, PMQ may make minor modifications to Goods the subject of an Quotation or Order without notice and for this purpose deliver revised designs or models of Goods against any Quotation or Order.
- 13.2. Where Goods are ordered from information supplied from a manufacturer or other supplier, PMQ has no Liability to the Customer for any minor alterations or amendments made by the manufacturers or other suppliers without notice to PMQ.
- 13.3. If PMQ is required to make a major alteration to Goods the subject of a valid Quotation or Order, including due to any alternation by a manufacturer or supplier, the Customer is entitled to cancel the Quotation or Order by written response to PMQ within two (2) Business Days of PMQ's change notification, and in such case the Customer shall only be required to pay for Goods actually delivered by PMQ prior to the alteration. If the Customer does not cancel a Quotation or Order within the time specified in this clause, the Customer is taken to have accepted the notified alteration.

14. DEFAULT, INSOLVENCY AND TERMINATION

- 14.1. If the Customer commits or suffers a Default Event, all monies owing by the Customer to PMQ become immediately due and payable and PMQ may, without affecting PMQ's other rights:
- 14.1.1. immediately suspend or terminate supply of Goods and or Services;
- 14.1.2. refuse, suspend or withhold supply of any further Goods and or Services;
- 14.1.3. enter upon (personally or by its employees or agents) any premises in the possession or control of the Customer and use reasonable force for the purposes of retaking possession of any Goods and or Services (title to which has not passed to the Customer), in which case the supply of those Goods and or Services by PMQ to the Customer shall be taken to be terminated and PMQ shall have no Liability to the Customer whether for trespass, negligence, payment of damages or compensation or otherwise;
- 14.1.4. terminate the Contract or any other credit arrangement with the Customer including a Credit Account;
- 14.1.5. sue the Customer for payment of all monies owing to PMQ by the Customer including damages on account of the Customer's breach and pursuant to any indemnity given by the Customer;
- 14.1.6. exercise any rights under any security interest or other security held by PMQ; and
- 14.1.7. exercise any other right or power under these Terms or at law.
- 14.2. PMQ may also terminate the Customer's Contract (including any Credit Account) with PMQ at any time by notice to the Customer if:
- 14.2.1. the Customer does not purchase any Goods or Services for a period exceeding six (6) months;

- 14.2.2. the Customer is late, or consistently late, in the payment of any purchases, or is in default of any other Terms;
- 14.2.3. there has been an adverse change, in the reasonable opinion of PMQ, in the Customer's business, including a failure to notify a change of ownership; or
- 14.2.4. for any other reason if PMQ reasonably determines that the Contract should be terminated, including if PMQ discontinues the supply of Goods and or Services the subject of the Contract or its business in its entirety.
- 14.3. The Customer may terminate the Contract with PMQ at any time by no less than 30 days notice to PMQ.
- 14.4. If the Contract is terminated under any of the foregoing provisions:
- 14.4.1. all unfulfilled Orders by the Customer accepted before the date of termination remain valid and binding except as otherwise agreed by PMQ; and
- 14.4.2. the Customer remains liable to pay, by the date payment would otherwise be required or upon demand, all monies remaining due by the Customer to PMQ on the Customer's account; and
- 14.4.3. PMQ shall be entitled to require the Customer to purchase the balance agreed minimum order quantities (if applicable) or in its absolute discretion require the Customer to pay an amount to PMQ in reasonable compensation of the Loss (including reasonable loss of profit) suffered by PMQ due to the Customer's failure to meet agreed minimum order quantity requirements.
- 14.5. For the avoidance of doubt, the Customer is liable to pay to PMQ on demand, and PMQ may recover on a full indemnity basis from the Customer, all Loss (including all legal costs) arising from or as a result of:
- 14.5.1. a Default Event;
- 14.5.2. a termination of the Customer's Contract due to any other act or omission of the Customer; and or
- 14.5.3. PMQ exercising or enforcing or seeking to exercise or enforce a right under these Terms, including to recover payments owing to PMQ.
- Such Loss may be recovered by PMQ from the Customer as a liquidated debt.
- 14.6. The Customer further agrees to indemnify and keep PMQ indemnified against any third party Claim and all other Loss which PMQ may suffer (including all legal costs on a full indemnity basis) arising in connection with any of the following:
- 14.6.1. any injury or death of any person in connection with delivery, installation, servicing, repair, commissioning or use of the Goods:
- (a) by the Customer;
- (b) on the Customer's premises or the premises of any agent, contractor or customer of the Customer;
- (c) due to any action or omission of the Customer or any employee, contractor, customer or agent of the Customer;
- 14.6.2. except where the Customer is an approved reseller or distributor of the Goods and the Goods are acquired for resale or distribution, any resale or distribution of the Goods;
- 14.6.3. the operations of the Customer's business in association with the Goods or Services, including any intellectual property breach;
- 14.7. except to the extent contributed to by any default or negligence of PMQ, its employees, contractors or agents.
- 15. CUSTOMER WARRANTIES**
- 15.1. The Customer warrants and represents to PMQ that it has:

TERMS AND CONDITIONS OF SALE

- 15.1.1. full power and authority to enter into and do all things required by these Terms; and
- 15.1.2. obtained all consents, permissions and licences necessary for it to perform its obligations under these Terms.
- 15.2. The Customer warrants that the Customer's details in any Application for Trade Credit Account or as otherwise provided to PMQ for the preparation of a Quotation, Order or other billing practices are true and correct.
- 15.3. Except as otherwise stipulated in the Customer's Application for Trade Credit Account, or a Quotation, Order or other document issued by PMQ, the Customer warrants that it does not enter into this Contract as trustee of a trust.
- 15.4. Where the Customer is the trustee of a trust, including in breach of clause 15.3:
- 15.4.1. the Customer warrants that it is the trustee of the trust and has the authority to enter into the Contract on behalf of the trust;
- 15.4.2. the Customer agrees to produce immediately to PMQ a stamped copy of the trust deed (including all amendments) upon written notice from PMQ demanding a copy of that trust deed;
- 15.4.3. the Customer warrants that it shall be bound by the Contract both personally and as trustee and any security of real or personal property provided by the Customer extends to any property held by the Customer as trustee; and
- 15.4.4. the foregoing warranties and Contracts shall be deemed repeated on each occasion that the Customer makes and Order.
- 16. ASSIGNMENT**
- 16.1. PMQ may assign its right title and interest under any Contract at any time by written notice to the Customer and, subject to the assignee agreeing in writing to be bound by the terms of the Contract, PMQ shall be immediately released from all liability to the Customer on or after the date the assignment takes place.
- 16.2. The Customer may not assign its right title or interest in any Contract to any person except with the consent of PMQ and remains liable for all monies payable to PMQ notwithstanding any purported assignment.
- 16.3. If the Customer is the holder of a Credit Account, if the Customer's business is sold or there is any other change in the controlling ownership of the Customer ("**Change of Control**"), the Customer must notify PMQ and either obtain consent to transfer of the Customer's Credit Account or payout and close the Credit Account. The Customer (including all Guarantors listed in the Customer's Application for Trade Credit Account) will remain liable for the account, including any orders submitted by the Customer's new ownership, until written notification of change of ownership of the business has been received by PMQ.
- 16.4. Whenever PMQ is required to consent to an assignment or Change of Control by the Customer, PMQ will not unreasonably refuse consent, but such consent may be subject to such reasonable conditions as PMQ requires, including the execution of an Application for Trade Credit Account by the Customer's new owners and guarantors.
- 17. LIMITATION OF LIABILITY**
- 17.1. By acquiring Goods and or Services the Customer warrants that the Customer has checked the Specifications of the Goods and or Services and is satisfied that the Goods and or Services meet all of the Customer's requirements.
- 17.2. Without limiting the foregoing, where Goods are manufactured according to the Customer's Specifications, the Customer accepts all Liability associated with any defect in the Specifications, or associated instructions or information, provided by the Customer.
- 17.3. PMQ takes its obligations to produce quality products very seriously, and undertakes to respond urgently to any quality defects and provide prompt notification of product recalls or other product concerns regarding Goods sold to the Customer, provided that, subject to clause 7 and except as otherwise agreed in writing by PMQ, the only conditions, guarantees and warranties which are binding on PMQ in respect of the state, quality or condition of the Goods or specification of the Services are those imposed and required to be binding by statute (including the Australian Consumer Law) and which cannot be excluded.
- 17.4. To the extent permitted by law, PMQ excludes all Liability for Loss in respect of Goods and any use of Goods:
- 17.4.1. whose serial number, identification or installation plate attached to those Goods has been altered, rendered illegible or removed.
- 17.4.2. installed, operated, serviced or maintained other than in accordance with the instructions provided by PMQ, the manufacturer's instructions and good work practices (in that order of priority);
- 17.4.3. connected to improper, inadequate or faulty power supply, water or drainage services;
- 17.4.4. damaged due to connection to or use of any accessories which were not manufactured or approved by PMQ;
- 17.4.5. operated using incorrect, insufficient or contaminated fuels, lubricants, coolants, refrigerants or additives;
- 17.4.6. subjected to misuse, abuse, negligence or accidents (including dropped, submersed, or impacted by an object);
- 17.4.7. damaged by unusual or non-recommended use or application of the Goods;
- 17.4.8. damaged or deteriorated due to weather, water, corrosion, fire, heat exposure, abrasion, chemicals, extremes of environment or any other external force or element;
- 17.4.9. modified, tampered with, serviced or repaired other than by PMQ or any authorised repairer or agent of PMQ including where serviced or repaired using replacement parts other than those approved by the manufacturer;
- 17.5. To the full extent permitted by law, PMQ's total Liability to the Customer in connection with a Contract is limited to the total price of Goods or Services actually paid by the Customer under the Contract.
- 17.6. To the full extent permitted by law, PMQ shall not have any Liability to the Customer for:
- 17.6.1. any exemplary, punitive, special, indirect, incidental or consequential damages of any kind, including, without limitation lost profits, lost revenue, lost savings, lost opportunity, loss of data or any similar damages, whether based in contract, tort (including negligence), strict liability or otherwise;
- 17.6.2. Loss to the extent the Customer has failed to take reasonable steps to minimise or mitigate such Loss; or
- 17.6.3. Loss to the extent the Customer's acts or omissions have caused for contributed to such Loss.
- 18. STATUTORY RIGHTS AND AUSTRALIAN CONSUMER LAW**
- 18.1.1. Notwithstanding anything to the contrary in these Terms or the additional terms of any Quotation, Order or Credit Account, if the Customer is a Consumer (as defined in Section 3 of the *Competition and Consumer Act 2010 (Cth)*), the Goods and or Services offered by

TERMS AND CONDITIONS OF SALE

PMQ also come with warranties and guarantees that cannot be excluded under the Australian Consumer Law. For example, the Customer (if a Consumer) is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage and the Customer is also entitled to have the Goods repaired or replaced or the Services rendered a second time, if the Goods and or Services fail to be of acceptable quality and the failure does not amount to a major failure.

18.2. Nothing in these Terms excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified.

19. INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION

19.1. All of PMQ's Intellectual Property Rights in and relating to the production, development and supply of the Goods or Services, including but not limited to designs, illustrations, technical specifications, forms and templates, software, instruction manuals, and other literature are and remain at all times PMQ's property.

19.2. PMQ grants to the Customer a non-transferrable, non-exclusive, revocable limited licence to use PMQ's Intellectual Property Rights in respect of the Goods or Services to the extent reasonably necessary for the sole purpose of the Customer's use of the Goods in accordance with the Contract.

19.3. The Customer must not deal in the Intellectual Property Rights of PMQ, including but not limited to reverse engineer the Goods and or Services and or attempt to replicate or reproduce the Goods and or Services or any parts thereof (with or without alteration).

19.4. The Customer must inform PMQ immediately if it becomes aware of any third party intellectual property infringement Claim in relation to PMQ's Intellectual Property Rights.

19.5. The Customer furthermore agrees to keep confidential any information regarding the Goods and or Services advised by PMQ from time to time which is not already available in the public domain, the onus of proof of which rests with the Customer. This includes of the kind listed in clause 19.1 as well as any marketing sales and distribution information, customer, supplier or distributor data, and other business or financial information provided by PMQ, its employees, contractors or agents during the supply of Goods or Services to the Customer.

19.6. The parties agree that damages may not be a sufficient or appropriate remedy for a breach by the Customer of the terms of this clause 19 and that PMQ shall be expressly entitled to obtain an order or orders to prohibit the use or disclosure of information contrary to this clause 19.

20. DISPUTE RESOLUTION

20.1. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Contract.

20.2. If any dispute arises in relation to any Contract, either party may serve on the other a notice of dispute and agrees to comply with the provisions of clause 20.3 before commencing any litigation against the other.

20.3. Within ten (10) days after service of a notice of dispute referred to in clause 20.2 the parties must confer, acting in good faith, within a period of no less than fourteen (14) days and at least once in person (if requested by PMQ), to attempt to resolve the dispute and failing resolution of dispute, to explore and if possible, agree on methods of resolving the dispute. At

each conference, each party must be represented by a person having authority to resolve the dispute in the course of the conference.

20.4. This clause does not prejudice the right of either party to seek urgent interlocutory relief or an injunction.

21. SECURITY INTEREST & TITLE

21.1. For the purposes of the PPSA (as amended from time to time) "Goods" in this clause means any and all present and after acquired Goods supplied by PMQ to the Customer. All other terms in this clause 21 defined in the PPSA have the same meaning as defined in the PPSA.

21.2. Notwithstanding risk in the Goods passing to the Customer at delivery or collection of the Goods, PMQ retains full title to the Goods until PMQ receives payment in full for the Goods and all other amounts owed by the Customer to PMQ.

21.3. Until all monies owing to PMQ by the Customer have been paid:

21.3.1. PMQ has the right to call for or recover possession of the Goods (for which purpose PMQ's employees or agents may enter onto the Customer's premises and/or sites controlled by the Customer) and the Customer must deliver up the Goods if so directed by PMQ; and

21.3.2. the Customer:

(a) agrees that the relationship between the Customer and PMQ shall be fiduciary and the Customer shall keep the Goods safely, securely and separately stored and marked in a manner which clearly indicates that they belong to PMQ;

(b) has the right to resell the Goods in the ordinary course of the Customer's business as PMQ's fiduciary agent but must not otherwise dispose of or encumber the Goods;

(c) until sale, shall store the Goods in accordance with the storage procedures advised by PMQ (if applicable) and warrants that the Goods will have been stored accordingly;

(d) shall not mix the Goods with or attach them to other materials or otherwise make them unable to be returned to PMQ in their original state; and

(e) will hold any proceeds (as that term is defined in the PPSA) of any sale, disposal or other dealing with the Goods or any product incorporating the Goods (including sale or supply to a party other than the Customer) in trust for PMQ and agrees that PMQ will have first priority to such proceeds or an alternative amount in any account of the Customer in which monies of the Customer are held.

21.4. To avoid any doubt, for the purposes of the PPSA, it is the intention of the parties by this clause 21.3 that there is created for the benefit of PMQ a Purchase Money Security Interest in the Goods which extends to all proceeds of any dealing in the Goods.

21.5. The Customer agrees that PMQ may register any security interest created by these Terms on the Personal Property Securities Register and the Customer waives its rights to receive a verification statement in respect of any financing statement or financing change statement registered by PMQ in respect of any personal property of the Customer.

21.6. The parties agree that, insofar as the provisions of Chapter 4 of the PPSA are for the benefit of the Customer or place an obligation on PMQ, those provisions will apply only to the extent that they cannot be contracted out of or to the extent that PMQ otherwise agrees in writing and, for the avoidance of any doubt:

TERMS AND CONDITIONS OF SALE

21.6.1. they agree that they contract out of and that nothing in the provisions of Sections 95, 96, 117, 118, 121(4), 130, 132(3)(d), 132(4), 142 and 143 of the PPSA will apply to these Terms or the securities granted under these Terms;

21.6.2. they agree to waive any rights under Sections 95, 123, 129, 130, 130(4); 132(3) (d), 135, and 143 of the PPSA; and

21.6.3. the Customer hereby consents and appoints PMQ to be an interested person and the Customer's authorised representative for the purposes of section 275(9) of the PPSA.

22. FORCE MAJEURE

22.1. If PMQ becomes unable wholly or in part by a Force Majeure Event to carry out an obligation under this Contract:

22.1.1. that obligation will be suspended for the duration of the Force Majeure Event; and

22.1.2. PMQ will not have any Liability to the Customer for any Loss arising from or in connection with the non-performance of that obligation for the duration of the Force Majeure Event.

22.2. Notwithstanding the above, if a delay or failure by PMQ to perform PMQ's obligations under this Contract due to a Force Majeure exceeds 20 Business Days, either party may immediately terminate the Contract by providing 5 Business Days' notice to the other party.

23. PRIVACY

23.1. The Customer warrants to have read and consents to PMQ's collection, storage, disclosure and destruction of any personal information provided by the Customer in accordance with PMQ's privacy policy available on the Website.

23.2. The Customer confirms that any personal information provided by the Customer will be accurate and complete. Furthermore, the Customer agrees to provide updated information, as and when further information is requested by PMQ for the purpose of reviewing the credit history of the Customer's Credit Account (if applicable), updating PMQ's credit file on the Customer (if any) and/or attending to any other assessment or matter in connection with Orders by the Customer.

23.3. The Customer is responsible for the safe keeping of all user names, passwords and other account information provided by PMQ and must ensure no unauthorised persons use the Customer's account with PMQ. PMQ reserves the right to accept Orders from any person who provides the credentials of the Customer and the Customer acknowledges that payment for such Orders shall be required whether or not such Orders were made in compliance with any internal procedures of the Customer.

24. NOTICES

24.1. Notices to be given by the Customer to PMQ must be in writing and delivered to PMQ:

24.1.1. personally at the office address of PMQ as publicly listed, in which case they will be taken to be received when delivered; or

24.1.2. by pre-paid post to the postal address of PMQ as publicly listed, in which case they will be taken to be received, except for evidence to the contrary, only when confirmed as received by PMQ; or

24.1.3. by email to PMQ at accounts@srasolutions.com.au unless another email address for correspondence is advised to be used by PMQ from time to time, in which case they will be taken to be received at the time stated in a read receipt obtained by the Customer's server stating that the email has been read by PMQ, or if no

read receipt is created, when replied to or otherwise confirmed received by PMQ.

24.2. Notices required to be given by PMQ to the Customer must be in writing and delivered to the Customer:

24.2.1. personally at the office address of the Customer as stated in the Customer's Application for Trade Credit Account, or otherwise notified by the Customer or publicly listed on any website of the Customer, in which case they will be taken to be received when delivered; or

24.2.2. by pre-paid post to the postal address of the Customer as stated in the Customer's Application for Trade Credit Account, or otherwise notified by the Customer or publicly listed on any website of the Customer, in which case they will be taken to be received two (2) Business Days after postage by PMQ; or

24.2.3. by email to the Customer at the email address for correspondence advised by the Customer as stated in the Customer's Application for Trade Credit Account, or otherwise notified by the Customer or publicly listed on any website of the Customer, in which case they will be taken to be received at the time stated in a read receipt obtained by the Customer's server stating that the email has been read by PMQ, or if no read receipt is created, two (2) Business Days after transmission, unless PMQ receives notification that the email communication has been delayed or impaired.

24.3. For the purpose of this clause, the Customer and PMQ hereby agree and consent to communications and notices in relation to the Contract being sent via electronic communication.

25. MISCELLANEOUS

25.1. PMQ may vary any of these Terms from time to time by notice to the Customer and the new Terms will apply from such notice, provided that any specific terms of the Customer's Credit Account shall continue to override anything to the contrary in the new Terms.

25.2. If PMQ issues a Terms update and the Customer does not wish to accept it, the Customer may terminate its Contract by notice in writing given to PMQ within thirty (30) days of issue of the updated Terms, failing which the Customer is taken to have accepted the updated Terms. If the Customer terminates its Contract with PMQ, the prior Terms will apply to any Orders by the Customer until the date the Contract ends.

25.3. If anything in these Terms or other parts of the Contract is unenforceable, illegal or void then that thing is severed and the rest of the Contract remains in full force and effect.

25.4. Any failure by PMQ to exercise any right or to insist on strict performance of any obligation of the Customer under these Terms or other parts of the Contract does not operate as a waiver and a partial exercise of a right does not preclude any further or fuller exercise of that right. Waivers of the rights or remedies of any party shall only be enforceable if made in writing by the party waiving the right or remedy.

25.5. These Terms or any other part of the Contract are not to be construed to the disadvantage of a party because that party was responsible for their preparation.

25.6. The Customer agrees that these Terms and the Contract generally shall be construed according to the laws of the State of New South Wales. Proceedings by either PMQ or the Customer may be instituted and/or continued in any Court in such State.