

TFP ENGINEERING PTY LTD
TERMS OF TRADE FOR THE SALE OF GOODS AND SERVICES

<p>1. Supply of Goods</p>	<p>These terms of trade (Sales Terms) apply to the sale of all goods, including parts, components, accessories and other items (Goods) and engineering services (Services) supplied, or to be supplied, by TFP Engineering Pty Ltd ACN 097 216 932 (Supplier) to a person requesting the supply of those Goods or Services (Customer) and whose details are specified in the quotation or other documentation produced by the Supplier and incorporating by reference these general terms and conditions (together, the Contract).</p> <p>Otherwise, no quotation or estimate provided by the Supplier to the Customer constitutes an offer to sell or to contract and no binding contract will arise as a result of any purchase order or other documentation received by the Supplier from the Customer in relation to a quotation or estimate (Offer) except as a result of the acceptance by the Supplier of an Offer made by the Customer that incorporates these Sales Terms.</p>
<p>2. Priority</p>	<p>The Contract contains the entire agreement between the parties with respect to the subject matter of the Contract and supersedes all prior agreements and understandings between the parties in connection with the subject matter of the Contract.</p> <p>The parties acknowledge and agree that any warranties, representations, terms and conditions supplied by the Customer (whether included in a purchase order or any other document) not recorded in these Sales Terms will be of no legal effect and will not constitute part of this Contract (even if a document containing such items is signed by any of the Supplier's personnel).</p> <p>Unless another part of the Contract expressly states otherwise, in the event of any inconsistency between other parts of the Contract and these Sales Terms, these Sales Terms will prevail.</p> <p>The Customer acknowledges that if the Customer requests any variation to the Goods or Services (as applicable) to be supplied, the Supplier has an absolute discretion to accept or reject the requested variation and acceptance may be subject to such conditions as the Supplier may determine in its absolute discretion. An agreement between the parties to vary the terms of the Contract must be recorded in writing. However, any such variation will only be binding on the Supplier if signed by a director of the Supplier or an employee of the Supplier with a title including the words "General" or "Operations" and "Manager".</p>
<p>3. Price</p>	<p>The price of Goods or Services as specified in the Contract by the Supplier (Price), subject to any specific terms and conditions contained in the Contract and unless otherwise agreed in writing, excludes delivery of the Goods to the premises to which the Goods are to be delivered in accordance with this Contract (Supply Address), the cost of packaging, loading and insurance charges, transportation of any Goods to the Supplier if the Customer makes a warranty claim and any other amount that the Supplier is required to pay, or which becomes payable, in respect of any taxes, duties or imposts of any kind imposed on the sale of the Goods or Services.</p> <p>The Customer acknowledges that if the Customer requests any variation in the Goods or Services (as applicable) to be supplied, the Supplier has an absolute discretion to accept or reject the requested variation and acceptance may be subject to such conditions as the Supplier may determine in its absolute discretion.</p>
<p>4. GST</p>	<p>Terms defined in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) have the same meaning in this clause 4. Unless expressly included, the consideration for any Supply under or in connection with these Sales Terms does not include GST.</p> <p>To the extent that any Supply made under or in connection with these Sales Terms is a Taxable Supply, the recipient must pay, in addition to the consideration to be provided under these Sales Terms for that Supply (unless it expressly includes GST), an amount equal to the amount of that consideration (or its GST exclusive market value) of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the Supply. The recovery of any amount in respect of GST by the Supplier under these Sales Terms is subject to the issuing of a Tax Invoice.</p>

<p>5. Delivery and passing of risk</p>	<p>The risk of any damage, loss, liability, cost, charge, expense, penalty, outgoing or payment (including legal costs on a solicitor and own client basis) (Loss) to Goods will pass to the Customer on delivery of the Goods (Delivery), which occurs on the earlier of:</p> <ol style="list-style-type: none"> collection of the Goods by the Customer; or delivery of the Goods to the Customer at the Supply Address; or delivery of the Goods by the Supplier to a carrier nominated by the Customer or arranged by the Supplier for the purpose of delivering Goods to the Customer at the Supply Address. <p>The Supplier is not liable for any failure to Deliver Goods or to perform the Services, including by any date agreed in writing by the Supplier as the date for the Delivery of Goods or performance of the Services, or for delay in the Delivery of Goods or performance of the Services occasioned by any cause whatsoever, whether or not it is beyond the control of the Supplier.</p> <p>The Supplier will use its reasonable endeavours to Deliver the Goods or perform the Services in accordance with the terms of the Contract but will not be liable for any failure to Deliver the Goods or perform the Services in accordance with any particular requirements of the Customer. Failure to Deliver part or all of the Goods or to perform part or all of the Services the subject of the Contract by any agreed time will not entitle the Customer to terminate the Contract or to claim compensation of any nature. The Customer is not entitled to reject Goods on the basis of late Delivery or to reject Services on the basis of late performance.</p>
<p>6. Information and access</p>	<p>The Customer must provide the Supplier, in a timely manner, with all necessary information, documents or other particulars and make the necessary arrangements for any access, approvals and permits, equipment and facilities that the Supplier may reasonably require for the Delivery of the Goods or performance of the Services.</p>
<p>7. Retention of title in respect of Goods</p>	<p>Notwithstanding that risk in Goods may have passed pursuant to clause 5, title to and ownership of the Goods remains with the Supplier at all times and does not pass to the Customer until such time as all amounts which from time to time are owing by the Customer to the Supplier with respect to those Goods have been paid in full. The Customer acknowledges that until such time as title to and ownership of the Goods passes to the Customer, the Customer is in possession of the Goods for and on behalf of the Supplier as bailee.</p>
	<p>The Customer grants to the Supplier an irrevocable licence to enter any of the Customer's premises, exercisable upon a Termination Event (as defined in clause 20 below) or where the Customer reasonably believes that any amount due under the Contract will not be paid in full when it falls due for payment. This licence to enter permits the Supplier by its officers, employees, servants, agents, representatives or invitees (Personnel), at its sole option to enter the Customer's premises and repossess and remove all Goods on the premises for which title has not passed to the Customer. The Customer consents to such actions and agrees that the Supplier will not be liable for any Loss suffered by the Customer as a result of the Supplier taking such actions.</p> <p>Until such time as title to and ownership of the Goods passes to the Customer in accordance with this clause 7, the Customer must store those Goods separately and in such a manner that they are clearly identified as the property of the Supplier and must not, without the written consent of the Supplier:</p> <ol style="list-style-type: none"> grant or register, or permit to be granted or registered any security interest (as defined in the Personal Property Securities Act 2009 (Cth) (PPS Act) (Security Interest) over any of the Goods in favour of another person which ranks in priority to the Supplier's Security Interest in the Goods; affix the Goods to any item of real or personal property; or sell or dispose or give possession or control of the Goods to another person.
<p>8. Uncollected Goods</p>	<p>Where title to Goods has passed to the Customer but the Goods remain in the possession of the Supplier, the Supplier may give notice to the Customer to collect the Goods within 7 days (Notice to Collect). If the Customer fails to collect the Goods within 7 days, the Supplier may issue a further notice to collect the Goods (Uncollected Goods) within 3 months (Notice of Disposal). If the Customer fails to collect the Uncollected Goods within 3 months:</p> <ol style="list-style-type: none"> all of the Customer's right, title and interest in the Uncollected Goods passes to the Supplier; the Supplier may sell, dispose of or otherwise deal with the Uncollected Goods as it sees fit; any deposits, advance payments or progress payments made by the Customer to the Supplier are forfeited by the Customer to the Supplier; the Customer releases the Supplier from any claims, actions, suits or proceedings arising in connection with the Uncollected Goods. <p>The Customer indemnifies the Supplier for any Loss incurred by the Supplier in connection with the Uncollected Goods.</p> <p>The Customer is liable to the Supplier, and the Supplier may charge to the Customer as a debt due and payable, the following charges in relation to any Uncollected Goods:</p> <ol style="list-style-type: none"> a charge of \$50.00 per square metre per month for storing the Uncollected Goods from the date of the expiration of the initial 7 day period in the Notice to Collect;

	<p>b. an administration charge of \$20, or such higher amount as may be reasonable, for each item of Uncollected Goods; and</p> <p>c. any expenses of the Supplier incidental to the sale or such other disposition of the Uncollected Goods.</p> <p>Any Goods to which title has passed to the Customer which are stored at the Supplier's premises are stored at the Customer's risk.</p> <p>In the event of any inconsistency between this clause 8 and any laws dealing with bailed goods, these terms and conditions will prevail to the extent permitted by law.</p>
9. Invoicing and Payment	<p>The Supplier will invoice the Customer for Goods and/or Services supplied under the Contract (Invoice). The Invoice will set out the Price and the quantity of Goods and/or Services supplied. The Customer must pay the Price for the Goods and/or Services supplied to the Customer:</p> <p>a. within 30 days from the end of the month in which the Invoice is issued (Due Date);</p> <p>b. unless otherwise agreed in the Contract, in cash, bank cheque or telegraphic or other electronic means of transfer of cleared funds into a bank account nominated in advance by the Supplier or in any other way that the Supplier directs in writing to the Customer; and</p> <p>c. without any abatement, reduction, or set-off by the Customer.</p> <p>If payment is not made by the Customer by the due date, the Supplier may charge interest on the amount outstanding, which will accrue interest from the first day after the due date until payment is made in full. Interest will be calculated on a daily basis with an interest rate equal to the Westpac indicator or benchmark rate as published in the Australian Financial Review on the date when the relevant amount is due for payment (or any other equivalent benchmark rate selected by the Supplier in its absolute discretion) plus 2%.</p>
10. Indemnity	<p>The Customer indemnifies the Supplier against any Loss suffered or incurred by the Supplier in respect of:</p> <p>a. death or personal injury to any person;</p> <p>b. damage to, or destruction or loss of, any property; or</p> <p>c. any other claims arising in connection with the Goods and Services, arising in connection with any wrongful act or omission by the Customer, including a breach of the Contract or a tort.</p> <p>Any liability of the Customer to indemnify the Supplier under this clause 10 shall be reduced proportionally to the extent that a wrongful act or omission of the Supplier caused or contributed to the:</p> <p>a. death personal injury to any person; or</p> <p>b. damage to, or destruction or loss of any property.</p>
11. Goods warranties	<p>Unless expressly notified by the Supplier to the Customer, the Supplier gives no warranty to the Customer in respect of Goods. The only applicable warranty statements are those specifically referred to in the Contract and copies of these statements are available upon request. The Customer acknowledges that recommendations concerning performance, dimensional information, operating costs and application contained in the Contract, or any other communication prepared by the Supplier or its suppliers, are intended as guidelines only. The Customer also acknowledges that, owing to the many variables peculiar to specific applications, neither the Supplier nor their suppliers, expressly or implicitly warrant that the Goods will necessarily perform as estimated.</p>
12. Service standards and warranties	<p>The Supplier shall exercise reasonable skill, care and diligence in the performance of the Services. Any parts supplied by the Supplier in carrying out the Services are supplied in accordance with the manufacturer's specific warranty (if any). Copies of the manufacturer's warranty statements are available on request. To the extent permitted by law, and unless otherwise agreed in writing, the Supplier's sole responsibility with respect to warranties relating to such parts is to pass on to the Customer the benefit of the manufacturer's specific warranty (if any).</p>
13. Exclusions	<p>To the extent permitted by law and except as set out in these Sales Terms:</p> <p>a. all express and implied warranties, guarantees and conditions however arising are excluded;</p> <p>b. the Customer releases the Supplier from all claims arising in connection with the Goods and Services;</p> <p>c. the Customer acknowledges that it has not relied upon any representation made by the Supplier, which has not been stated expressly in these Sales Terms;</p> <p>d. the Supplier shall not be liable for any loss of production, loss of actual or anticipated profit, loss of overhead, loss of contract, loss of revenue or loss of opportunity, howsoever caused, including negligence or any other consequential, indirect or special loss, damage or injury of any kind whatsoever arising directly or indirectly from Goods and Services or any defect; and</p> <p>e. any claims against the Supplier for other loss or damage of any kind including, without limitation, loss from failure of the Goods and Services to operate for any period of time, economic, moral, direct, immediate, special, indirect or consequential loss or damage are expressly excluded.</p>

<p>14. Liability of the Supplier</p>	<p>Notwithstanding anything else in these Sales Terms, unless the Goods are goods of a kind ordinarily acquired for personal, household or domestic use or consumption, any liability of the Supplier to the Customer arising under statute which may not be excluded, restricted or modified by agreement:</p> <ul style="list-style-type: none"> a. the cost of replacing the Goods; b. the cost of obtaining an equivalent product; or c. the cost of having the Goods repaired, whichever the Supplier may elect. <p>Notwithstanding anything else in these Sales Terms, the Supplier also limits its liability for a breach of a condition or warranty in respect of the supply of Services to:</p> <ul style="list-style-type: none"> d. supplying the Services again; or e. the payment of the costs of having the Services supplied again, whichever the Supplier may elect. <p>Nothing in these Sales Terms is intended to exclude, restrict or modify rights which the Customer may have under the Competition and Consumer Act 2010 (Cth) or otherwise which may not be excluded, restricted or modified by agreement.</p>
<p>15. General representations and warranties</p>	<p>The Customer acknowledges that the Supplier is relying on the representations and warranties made to it in connection with these Sales Terms.</p> <p>The Customer represents and warrants to the Supplier that:</p> <ul style="list-style-type: none"> a. if it is a company, it is duly incorporated and validly existing under the laws of its place of incorporation; b. it has power to enter into and perform its obligations under the Contract and to carry out the transactions contemplated by the Contract; c. an Insolvency Event has not occurred in relation to it; and d. unless expressly stated, it does not enter into the Contract as a trustee. In these Sales Terms, an Insolvency Event means where the Customer: <ul style="list-style-type: none"> e. is insolvent, bankrupt or unable to pay its debts as they fall due; f. enters into an arrangement with its creditors; g. takes or has instituted against it an action or proceedings whether voluntary or compulsory with the object of, or which may result in, the winding-up or bankruptcy of the Customer; or h. has a winding-up or bankruptcy order made against it or passes a resolution for winding-up or bankruptcy.
<p>16. Confidentiality</p>	<p>Subject to the exceptions set out in this clause 16, the Customer must keep secret, and confidential, and must not divulge or disclose any of the Supplier's confidential information, trade secrets, know how, scientific, technical, product, market or pricing information relating to the Supplier's business or the Contract (Confidential Information). The Customer must take all reasonable steps to ensure that any person to whom it discloses the Supplier's Confidential Information under the Contract does not make public, or disclose, the Confidential Information.</p> <p>The restrictions in this clause do not apply where the relevant Confidential Information:</p> <ul style="list-style-type: none"> a. is public knowledge (other than as a result of a breach of the Contract); b. is required by law to be disclosed, provided the Customer has notified the Supplier of such requirement as soon as possible after becoming aware of such requirement; or c. is disclosed to the Customer's directors, officers, employees, financial advisers, analysts and legal representatives for the purpose of exercising rights under and performing the Contract.
<p>17. Security Interests</p>	<p>The Customer acknowledges that under these Sales Terms the Customer grants Security Interests to the Supplier including a retention of title in respect of the Goods (in accordance with clause 7). The Customer acknowledges that the Contract constitutes a security agreement within the meaning of the PPS Act.</p> <p>The Security Interests arising under these Sales Terms attach to the Goods (as applicable) when the Customer obtains possession of the Goods (as applicable) and the parties confirm that they have not agreed that any Security Interest arises under these Sales Terms at any later time.</p> <p>The Customer acknowledges that the Supplier may perfect its Security Interests by lodging one or more Financing Statements (as defined in the PPS Act) in each class/es of collateral determined by the Supplier on the Personal Property Securities Register established under the PPS Act.</p> <p>The Customer undertakes to do anything reasonably required by the Supplier to enable the Supplier to register its Security Interests, with the priority the Supplier requires, and to maintain the registration. The Customer agrees not to make an amendment demand under the PPS Act until its obligations under all Security Interests held by the Supplier have been fully satisfied.</p>

18. Personal Property Securities Law	<p>The Supplier does not need to give the Customer any notice under the PPS Act (including a notice of a Verification Statement) unless the notice is required by the PPS Act and that requirement cannot be excluded. The parties agree that neither party will disclose to an 'interested person' (as defined in section 275(9) of the PPS Act) or any other person, any information of the kind described in section 275(1) of the PPS Act unless section 275(7) of the PPS Act applies. The Customer will not authorise the disclosure of any information of the kind described in section 275(1) of the PPS Act. All of the enforcement provisions of Chapter 4 of the PPS Act apply to all of the Security Interests created under or referred to in these Sales Terms except that in each case to the extent permitted by the PPS Act the following provisions of the PPS Act will not apply - section 95 (notice of removal of accession), to the extent that it requires the Supplier to give a notice to the Customer; subsection 121(4) (enforcement of liquid assets – notice to grantor); section 125 (obligation to dispose of or retain collateral); section 130 (notice of disposal), to the extent that it requires the Supplier to give the Customer a notice; paragraph 132(3)(d) (contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).</p>
19. Intellectual Property	<p>All intellectual property rights throughout the world, whether registered or unregistered, existing now or in the future, including copyright, patents, designs, trademarks, business names, domain names, know-how, confidential information, inventions, concepts, semi-conductor and circuit layouts, trade secrets, processes, methods and other analogous rights (Intellectual Property Rights) subsisting in the Goods, Services and any other thing prepared or developed as part of the supply by the Supplier contemplated by the Contract (Project IP) vest in the Supplier upon creation.</p> <p>All Intellectual Property Rights owned by the Supplier, or licensed to the Supplier by a third party, and which:</p> <ol style="list-style-type: none"> are in existence prior to the date of this Contract; or came into existence other than in connection with this Contract, <p>are Supplier IP and remain, the property of the Supplier or the relevant third party.</p>
20. Termination	<p>It is a Termination Event if:</p> <ol style="list-style-type: none"> the Customer makes any false representation (whether by act or omission) in respect of the Goods or Services; the Customer breaches or fails to comply with any term of the Contract; suspends or ceases to carry on business; an Insolvency Event occurs with respect to the Customer; a change in control of the Customer occurs.
21. Supplier's remedies on termination	<p>If a Termination Event occurs the Supplier is entitled (without prejudice to any other right or remedy) at its option to immediately do any one or more of the following:</p> <ol style="list-style-type: none"> declare all amounts actually or contingently owing by the Customer to the Supplier (including for any Services performed but not already paid for), whether or not due and payable, to be immediately due and payable; refuse to supply Goods or Services to the Customer; terminate the Contract; or repossess and remove all Goods for which title has not passed to the Customer in accordance with clause 7.
22. Cancellation	<p>The Customer has no right to cancel or suspend the supply of Goods or Services contemplated by the Contract. If the Customer nevertheless purports to cancel or suspend such a supply then, in addition to any other rights that the Supplier may have under the Contract (including these Sales Terms) or at law, the Customer must indemnify, and keep indemnified the Supplier against any Loss incurred by the Supplier arising from the purported cancellation or suspension, including any loss of actual or anticipated profit, loss of overhead, loss of contract, loss of revenue or loss of opportunity.</p>
23. Notices	<p>All notices and other documents given or required to be given pursuant to this Contract must:</p> <ol style="list-style-type: none"> be in writing and in clear legible English; signed by a person duly authorised by the sender; and be delivered by prepaid post, by hand or by facsimile to the party to whom the notice is addressed at its address shown in this Contract, as applicable, or such other address as it may have notified to the other party.
24. General	<p>The Supplier may transfer, assign, novate or sub-contract any of its rights or obligations under the Contract without the prior written consent of the Customer. The Customer's rights and obligations arising out of or under the Contract are not assignable by the Customer without the Supplier's prior written consent.</p> <p>The Customer must promptly do all further acts and execute and deliver all further documents (in a form and content reasonably satisfactory to the Supplier) required by law or reasonably requested by the Supplier to give effect to these Sales Terms or any obligation under them.</p>

	<p>Waiver of any right by the Supplier arising from a breach of these Sales Terms by the Customer or on the occurrence of a Termination Event must be in writing and executed by the Supplier. A failure to exercise, a delay in exercising, or a partial exercise of, a right by the Supplier created under or arising from a breach of these Sales Terms or on the occurrence of a Termination Event does not result in a waiver of that right. These Sales Terms are not intended to create a partnership, joint venture or agency relationship between the parties. A provision of, or the application of a provision of, these Sales Terms which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or the remaining provisions in that or any other jurisdiction.</p> <p>The Supplier need not incur any cost or make any payment before enforcing any right of indemnity under this Contract. Such indemnities are continuing obligations of the Customer, remain separate and independent from the other obligations of the parties and survive the termination of the Contract for whatever reason.</p>
<p>25. Governing Law</p>	<p>These Sales Terms are governed by and construed in accordance with the law of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.</p>
<p>26. Interpretation</p>	<p>In these Sales Terms:</p> <ul style="list-style-type: none"> a. The singular includes the plural and the plural includes the singular. b. The word 'includes' in any form is not a word of limitation. c. Words of any gender include all genders. d. Other parts of speech and grammatical forms of a word or phrase defined in these Sales Terms have a corresponding meaning. e. An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency as well as an individual. f. A reference to a clause, party, schedule or attachment is a reference to a clause of, and a party, schedule or attachment to, these Sales Terms and a reference to these Sales Terms includes any schedule and attachment. g. A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them. h. A reference to a document includes all amendments or supplements to, or replacements or novations of, that document. i. A reference to a party to a document includes that party's successors and permitted assignees. j. A promise on the part of two or more persons binds them jointly and severally. k. A reference to an agreement other than these Sales Terms includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing. l. A reference to insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death. m. No provision of these Sales Terms will be construed adversely to a party because that party was responsible for the preparation of these Sales Terms or that provision. n. A reference to dollars or \$ is a reference to the lawful currency of Commonwealth of Australia unless expressly stated to the contrary. o. A reference to a body, other than a party to these Sales Terms (including an institute, association or authority), whether statutory or not: <ul style="list-style-type: none"> (i) which ceases to exist; or (ii) whose powers or functions are transferred to another body, p. is a reference to the body which replaces it or which substantially succeeds to its powers or functions.