Conditions of Sale (CUSTOMER TO RETAIN)

Definitions

"*ACL*" means Australian Consumer Law as set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth);

"Conditions of Sale" means this document and any variations as notified by the Supplier to the Purchaser from time to time;

"*Confidential Information*" means any proprietary or confidential documents, knowledge and information, prices, specifications, business and trade secrets, formulas and know-how, prices, production method, samples, models, drawings, data standard sheets, manuscripts and other technical and business documentation supplied or made known to the Purchaser, or other information in any form concerning the Supplier and its related entities worldwide;

"Consequential Loss" means loss of use, loss of production, loss of profit, loss of income, loss of revenue, loss of business, loss of opportunity, business interruption, financing costs, increase in operation costs, economic loss or any special, indirect or consequential loss or damage;

"Contract" means the Conditions of Sale and any other document(s) identified by the parties as a Contract document, including, but not limited to, an order, a quotation and/or an order confirmation issued by the Supplier;

"Delivery Date" has the meaning in clause 4(a);

"*Force Majeure Event*" means any cause whatsoever that is beyond the Supplier's control including but not limited to Act of God; war; civil disturbance; requisitioning governmental restrictions, pandemic, prohibitions or enactments of any kind; import or export regulations; strikes; lock-outs or other industrial disputes (whether involving its own employees or those of any other person); difficulties in obtaining workmen or materials; breakdown of machinery; fires; or accident;

"Goods" means the products or items to be supplied by the Supplier pursuant to the Conditions of Sale;

"*GST*" means the goods and services tax or similar value added tax levied or imposed in Australia under the GST Act and includes any replacement or subsequent similar tax; "*GST Act*" means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and "*Taxable Supply*" and "*Tax Invoice*" have the same meaning as in the GST Act;

"*Intellectual Property*" means all intellectual property rights of the Supplier and its related bodies corporate (including, without limitation, all copyright, designs, trade marks and patents) of any nature in any samples, cost estimates, sketches, inventions, designs, works, discoveries, trade secrets, know-how, computer software, Confidential Information (including in electronic form) and subject matter other than works, any application or right to apply for registration of such rights.

"Price" has the meaning in clause 3(b);

"Purchaser" means the person or entity purchasing the Goods from the Supplier;

"Services" means any services supplied by the Supplier in relation to the Goods, including advice accompanying the supply of Goods;

"*Supplier*" means Phoenix Contact Pty Ltd, ABN 28 069 405 125 of Unit 7, 2-8 South Street, Rydalmere, NSW 2116.

1. Application of Conditions of Sale

(a) These Conditions of Sale apply to all quotations, offers and purchase orders made or accepted by the Supplier and to deliveries of all Goods to any Purchaser. So far as applicable these Conditions of Sale also apply to the provision of any Services, and, where the context allows, any reference to the supply of Goods includes the provision of such Services.

(b) These Conditions of Sale (which can only be waived or varied in writing by the Supplier) will prevail over all conditions of the Purchaser.

2. Offer & Acceptance

(a) Neither a Purchaser' quotation nor any order submitted or placed by a Purchaser ("*Order*") shall be binding on the Supplier unless and until the Supplier has given written acknowledgement of its acceptance on terms which include these Conditions of Sale ("*Order Confirmation*"). If Goods are supplied without an Order Confirmation, the applicable invoice shall be deemed to constitute the Order Confirmation.

(b) Each supply which the Supplier made in response to an Order will be regarded as a separate contract for sale which is subject to these Conditions of Sale ("*Contract*").

(a) The Supplier reserves the right to accept or reject any Orders received from any prospective Purchaser.

(b) Unless otherwise stated, any quotations issued by the Supplier are open for acceptance for 30 days from date of quotation, and thereafter are subject to Supplier confirmation before acceptance.

(c) Any changes made by the Purchaser to an Order, following receipt of that Order by the Supplier, may be subject to adjustments in:
(i) Price;
(ii) Delivery Date; and
(iii) any extra expenses incurred by the Supplier, at the discretion of the Supplier.

(d) The Purchaser may not without the Supplier's prior written approval cancel any Order for Goods "made-to-order", with configurable inputs or modified to the Purchaser's requirements ("*Configured Goods*") , if, at the time of receiving the cancellation request, the Supplier has commenced to design, develop or produce the Configured Goods. If the Supplier approves the cancellation of the Order for Configured Goods in writing, the Supplier reserves the right, at its sole discretion, to charge the Purchaser for the Price in part or in full.

(e) Any drawings or printed materials provided by the Supplier in support of a quotation, or in response to a request from the Purchaser, are for general information purposes only and do not form part of the Contract, unless agreed in writing by the Supplier.

3. Price & Payment

(a) All prices shown in published catalogues or price lists are recommended selling prices only and there is no obligation on the part of the Supplier to supply the Goods at those published prices.

(b) The price of the Goods is the price provided by the Supplier in its quotation or in response to an Order submitted by the Purchaser.

(c) The Price is for standard stock items only, and includes standard packaging.

(d) Prices remain subject to reasonable change, whereby the new prices will apply to any Orders received by the Supplier 30 days after written notice of the new prices was given by the Supplier to the Purchaser.

(e) The Supplier may, in its absolute discretion, determine whether a Purchaser has a satisfactory credit rating. Unless otherwise agreed in writing, based upon such credit determination as notified by the Supplier:

(i) if the Purchaser has a satisfactory credit rating, payment for the supply of Goods must be made within 30 days from the date the Purchaser is invoiced; or
(ii) if the Purchaser does not have a satisfactory credit rating, payment for the supply of Goods must be made in full prior to or upon delivery of the Goods, i.e. cash on delivery.

(f) The Supplier may charge interest on late payments at 10.0% per annum.

(g) If GST is imposed on a Taxable Supply made by the Supplier to the Purchaser under or in connection with these Conditions of Sale, the Price of the Taxable Supply shall be equal to the GST-exclusive

consideration that the Purchaser must pay to the Supplier for the Taxable Supply under these Conditions of Sale increased by an amount (the GST Amount) equal to the amount of GST payable on that Taxable Supply and the GST Amount is, subject to the Supplier issuing a Tax Invoice to the Purchaser, payable at the same time and in the same manner as the consideration to which it relates.

(h) The Purchaser may not withhold or set off any payment or make deductions from any amount owing to the Supplier without the Supplier's prior written consent.

(i) The Supplier will charge a fee of $20.00 + GST per transaction, for payments paid via cheque, to cover the Supplier's administration and processing fees.

(j) The Supplier reserves the right to charge a fee of no more than $20.00 + GST per transaction as a dishonour fee, in instances where Purchaser payments are dishonoured by the bank. This is to cover the Supplier's administration and processing fees.

(k) Where a credit note is issued by the Supplier to the Purchaser and appears on the monthly statement of account, the Purchaser may, during a period of 12 months from the date of issue of the credit note ("*Credit Note Period*"), apply the amount specified in the credit note against any amount currently payable by the Purchaser to the Supplier as stated in the Purchaser's account statement. If the amount of the credit note is not applied within Credit Note Period, then the credit note will cease to be effective and the amount in the credit note will be reversed from the Purchaser's statement of account.

4. Delivery

(a) Any time or date of month stated by the Supplier for anticipated or promised delivery of the Goods is a bona fide estimate only, and is made on the assumption that the Purchaser's Order is accompanied by sufficient information for the Supplier to process the Order.

(b) If the Supplier is delayed by a Force Majeure Event then the Supplier may suspend delivery or extend the Delivery Date in respect of the whole or part of the Goods

(c) The Supplier shall not be liable to the Purchaser for any loss or damage, including Consequential Loss, arising from any delivery after the Delivery Date, unless such loss or damage was caused by the Supplier.

(d) For standard value Orders a delivery charge of $20.00 + GST per Order will be added to the Price of the Goods. For larger value Orders, the Supplier may charge freight based on size and weight of consignment.

(e) Delivery may be made in one or more instalments. Each instalment shall form a separate Contract on delivery and be accepted and be paid for accordingly notwithstanding any late delivery or non-delivery of any other instalment.

(f) The failure of the Supplier to deliver within 12 months of the Delivery Date shall entitle the Purchaser to terminate the Contract unless the delay was caused by the Purchaser or a Force Majeure Event.

(g) If the Purchaser requests changes after the Supplier has issued an Order Confirmation and such changes affect the duration of production of the Goods, a new delivery time will be advised by the Supplier at its sole discretion.

(h) If the quantity of Goods delivered does not correspond with the quantity stated in an Order Confirmation, the Purchaser shall only be liable to pay for the quantity delivered in the case of short-delivery and for the price stated in the Order Confirmation in the case of over-delivery (subject in the latter case to the Purchaser permitting the Supplier to collect the surplus Goods), provided that in no event shall such short or over-delivery entitle the Purchaser to damages or give the Purchaser a right to rescind the Contract. Any surplus Goods delivered shall remain the property of the Supplier and the Purchaser shall take all necessary precautions for the safe custody and protection of such surplus Goods until the time of their removal by the Supplier.

(i) Goods may be returned by the Purchaser for a minimum restocking fee of 25%, subject to:

- the Goods being delivered to the Supplier's premises at the Purchaser's expense in re-saleable condition and in the original packaging;
- the Goods being accompanied by a pre-authorised Goods Return Authority; and
- the Supplier reserves its right to refuse a credit for any returned Goods if:
  - (i) the Goods have been discontinued or otherwise no longer appear in the Supplier's current price lists;
  - (ii) the Goods were "Made-to-Order," or modified to the Purchaser's requirements; or
  - (iii) the Supplier otherwise determines, after inspection and investigation, in its sole discretion, that the claim for a credit is unjustified, or
  - (iv) if the Goods are returned later than 7 days after the date of the invoice.

5. Passing of title and risk

(a) Unless otherwise agreed by the Supplier in writing, risk in the Goods shall pass to the Purchaser when the Goods are delivered in accordance with clause 4 at the time the Supplier notifies the Purchaser that the Goods are ready for dispatch, with the risk passing at the latest when the Goods are handed over to the shipping agent or carrier. The same applies in the case of partial delivery and if the Supplier delivers freight prepaid.

(b) Notwithstanding that risk passes to the Purchaser under clause 5(a), legal and beneficial title ("*Ownership*") in the Goods shall remain with the Supplier until:

- the Goods are the subject of an Order Confirmation; and
- the price for the Goods as well as any other amounts the Purchaser may owe the Supplier have been paid in full.

(c) Until such time as Ownership in the Goods passes to the Purchaser, the Purchaser shall:

- be in a fiduciary relationship with the Supplier;
- store the Goods in a manner which makes them readily identifiable as the property of the Supplier;
- hold the Goods as bailee of the Supplier;
- keep, and provide the Supplier at any time on reasonable request, proper and complete stock records covering the receipt, identification, storage, location, sale and movement of the Goods; and
- keep the Goods insured against theft, damage and destruction (and provide to the Supplier upon request a copy of the insurance certificates).

(d) To the extent that any Goods sold by the Supplier to the Purchaser are subject to a retention of title under this clause 5, the Purchaser must on-sell any Goods to its customers subject to retention of title.

(e) The Purchaser is not an agent of the Supplier and does not have any rights in, or title to, the Goods and the Purchaser must not grant or purport to grant right in, or title to, the Goods to customers or any other third party or grant a security interest (as that term is defined in the PPSA) in the Goods to any other party, or authorise any other party to take a security interest in the Goods.

(f) In the event that the Purchaser sells, uses or otherwise disposes of the Goods (whether in their original condition or processed and combined with other articles), the Purchaser will hold the proceeds of such sale, use or disposal on trust for the Supplier.

(g) The Supplier is entitled at any time while any debt remains outstanding by the Purchaser to notify the Purchaser of its intention to take possession of the Goods and for this purpose the Purchaser

irrevocably authorises and licenses the Supplier and its servants and agents to enter upon the land and buildings of the Purchaser with all necessary equipment to take possession of the Goods. The Supplier is not liable for damage or injury to any premises caused by the Supplier exercising its rights under this clause.

(h) On the happening of any of the events set out in clause 5(i), the following applies:

- the Supplier may at its discretion demand advance payment or cash payment on delivery for future deliveries of Goods to the Purchaser;
- the Supplier may stop work on the production of Goods under current Contracts or terminate such Contracts;
- the Supplier may withhold delivering further Goods and all invoices issued by the Supplier to the Purchaser become due and payable immediately; and
- the Purchaser must immediately deliver to the Supplier all Goods which are in the Ownership of the Supplier.

(i) The Purchaser shall give immediate notice to the Supplier if:

- the Purchaser becomes insolvent under administration as defined in Section 9 of the *Corporations Act 2001*;
- any step is taken (including without limitation, any application made, proceedings commenced, or resolution passed or proposed in a notice of meeting) for the winding up or dissolution of the Purchaser or for the appointment of an administrator, receiver, receiver and manager or liquidator to the party or any of its assets;
- the Purchaser resolves to enter into or enters into a scheme of arrangement or composition with, or assignment for the benefit of all or any class of its creditors or proposes a reorganisation, moratorium or other administration involving any of them;
- proceedings are commenced to make the Purchaser bankrupt or the Purchaser becomes bankrupt;
- an event analogous to any of those set out in the above clauses occurs.

6. Personal Property Securities Act 2009 ("*PPSA*")

(a) The Purchaser acknowledges and agrees that it grants the Supplier a security interest in the Goods and their proceeds by virtue of the Supplier's retention of title pursuant to clause 5.

(b) The Purchaser undertakes to:

- do all things necessary and provide the Supplier on request all information the Supplier requires to register a financing statement or financing change statement on the Personal Property Securities Register ("*PPSR*"); and
- not to change its name in any form or other details on the PPSR without first notifying the Supplier.

(c) The Purchaser waives its rights to receive a verification statement in respect of any financing statement or financing change statement in respect of the security interest created by these Conditions of Sale.

(d) To the maximum extent permitted by law, the Purchaser waives any rights it may have pursuant to, and the parties contract out of, the following sections of the PPSA:

- section 95 (notice of removal of accession);
- section 123(2) (notice of seizure);
- section 125 (obligation to dispose of or retain collateral);
- section 129(2) (notice of disposal by purchase);
- section 130 (notice of disposal);
- section 132(3)(d) (contents of statement of account after disposal);
- section 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).

(e) The Purchaser appoints the Supplier as its attorney to sign in the Purchaser's name all documents which the Supplier considers necessary to enforce or protect its rights and powers under these Conditions and to perfect, preserve, maintain, protect or otherwise give full effect, under the PPSA and related regulations, to these Conditions of Sale and the Security Interest created by these Conditions.

(f) The Purchaser will reimburse the Supplier for any fees payable by the Supplier in relation to the registration of the Security Interest created by these Conditions of Sale , including registration fees and maintenance fees.

(g) These Conditions of Sale create a Security Interest in all Goods which the Supplier has supplied to the Purchaser and all Goods which the Supplier supplies to the Purchaser in the future. Initial registration of a financing statement by the Supplier in respect of the Purchaser under the PPSA covers Security Interests in Goods supplied now or subsequently under these Conditions of Sale.

(h) Unless otherwise defined in these Conditions of Sale, the terms and expressions used in this clause 9 have the meanings given to them, or by virtue of, the PPSA.

7. Conditions and Warranties

(a) For the purposes of these Conditions of Sale, a Consumer Guarantee means a right or guarantee that the Customer may have under the ACL or other rights in relation to the supply of goods or services (such terms as implied into a Contract) that cannot be lawfully excluded.

(b) Nothing in these Conditions of Sale excludes, restricts or modifies the application of the ACL and any rights which the Purchaser may have thereunder.

(c) To the fullest extent permitted by law, the Supplier's liability for any breach of a consumer guarantee implied by the ACL (and which cannot be excluded) shall be limited to any one or more of the following (as determined by the Supplier in its absolute discretion):

- in the case of Goods, the replacement repair or payment of the cost of replacement or repair of the Goods; and
- in the case of Services, supplying the Services again or payment of the cost of having the Services supplied again.

(d) The Supplier's liability in respect of a breach of or a failure to comply with a Consumer Guarantee will not be limited in the way set out in clause 8(c) if:

(i) the Goods or Services supplied are goods or services 'of a kind ordinarily acquired for personal, domestic or household use or consumption', as that expression is used in section 64A of the ACL;

(ii) it is not 'fair or reasonable' for the Supplier to rely on such limitation in accordance with section 64A(3) of the ACL; or

(iii) the relevant Consumer Guarantee is a guarantee pursuant to sections 51, 52 or 53 of the ACL.

(e) Subject always to the Supplier's liability under ACL and the extent that liability cannot be legally limited or excluded:

(i) the Supplier's total aggregate liability arising out of or in connection with the Contract of which these Conditions of Sale form part, shall be limited to the price paid by the Customer for the Goods and Services under the Contract per event and in aggregate; and

(ii) the Supplier shall under no circumstances be liable for Consequential Loss whether or not such loss was foreseeable.

8. Intellectual Property

(a) The Supplier for and on behalf of itself, its related bodies corporate and licensors reserves ownership in any Intellectual Property, relating to the Quotations, Specifications, technical drawings, price lists, tender documentation and Goods (including any associated software) ("*Protected Items*"). Nothing in these Conditions of Sale operates or is intended to deny the Supplier or its related bodies corporate, or confer on the Purchaser, the Intellectual Property or any other intellectual property rights in the Protected Items.

(b) The Purchaser must not use or make the Protected Items available to third parties without the prior written consent of the Supplier.

(c) The Purchaser must only use the Protected Items and any associated Intellectual Property in accordance with the terms of the Contract.

(d) The Purchaser must not use, reproduce or copy any software associated with the Product, without the prior written consent of the Supplier.

(e) If the Purchaser becomes aware of any actual, threatened or suspected infringement of the Intellectual Property, the Purchaser must inform the Supplier promptly of the actual, threatened or suspected infringement.

(f) The Purchaser shall indemnify the Supplier for and in respect of claims by any third party in relation to Goods where such claims arise from, or can be attributed to, the special requirements or specifications of the Purchaser.

(g) In the event that the Supplier provides documentation containing Intellectual Property or Confidential Information of the Supplier as part of a tender and such tender is unsuccessful, the Purchaser must immediately return to the Supplier any originals and copies of all materials which contain, or relate to, Intellectual Property of the Supplier and which are in the Purchaser's possession or under its control and, if requested by the Supplier, the Purchaser will provide the Supplier with a written confirmation that the Purchaser has complied with the terms of this clause.

9. Confidentiality

(a) All Confidential Information is and will remain the exclusive property of the Supplier.

(b) The Purchaser must not, except as required by law or by the Supplier directly or indirectly communicate any Confidential Information to any person without the prior written consent of the Supplier, and must at all times use its best endeavours to prevent the use or disclosure of any Confidential Information by third parties.

(c) The Purchaser will impose the same obligation as set out under clause 9(b) on its employees and contractors who are involved in the performance of the Contract.

10. Privacy

The Purchaser acknowledges that the Purchaser's personal information as defined under the Privacy Act 1988 ("*Act*") is likely to be disclosed to recipients located in Germany, being the location of the parent company of the Supplier. The Purchaser expressly consents by to the Supplier disclosing the Purchaser's personal information to third parties located outside Australia whereby a) the Supplier will not be accountable under the Act , b) the Purchaser will not be able to seek redress under the Act, c) the overseas recipient may not be subject to any privacy obligations or to any principles similar to the Australian Privacy Principles, d) the Purchaser may not be able to seek redress in the overseas jurisdiction; and e) the overseas recipient may be subject to a foreign law that could compel the disclosure of personal information to a third party, such as an overseas authority.

11. Assignment

The Contract of which these Conditions of Sale form part is personal to the Purchaser and may only be assigned by the Purchaser with the prior written and informed consent of the Supplier. The Supplier may assign these Conditions, and any Contract of which they form part, without the consent of the Purchaser.

12. Waiver

No neglect, delay or indulgence on the part of a party in enforcing these Conditions of Sale shall prejudice the rights of that party or be construed as a waiver of any such rights.

13. Severability

If any one or part of these Conditions of Sale is illegal, invalid or unenforceable it shall be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it shall be severed from these Conditions of Sale, but in any event the remaining Conditions of Sale and any other provisions of the agreement of which these Conditions of Sale form part shall remain in full force and effect.

14. Whole Agreement

In relation to the subject matter of these Conditions of Sale, these Conditions of Sale supersede all oral and written communications by or on behalf of any of the parties.

15. Governing Law

The Conditions of Sale and any Contract of which they form part are governed by and must be construed in accordance with the laws which apply in the State of New South Wales and the parties submit to the jurisdiction of that State.

16. Compliance with export control and counter-terrorism laws

(a) The Purchaser warrants that the Purchaser is not a designated person on any list issued by a government under resolution 1373 adopted by the United National Security Council on 28 September 2001 ("UNSCR 1373") ("Designated Person"), including, but not limited to:

- The Denied Persons List (DPL) of the U.S. Department of Commerce ("BIS"),
- The list of Special Designated Nationals and blocked persons list of the U.S. Treasury Department (OFAC),
- The Entity List of BIS,
- The Unverified List of the BIS,
- The EU list of persons, groups and entities subject to Articles 2, 3 and 4 of the Common Position 2001/931/CFSP on the application of specific measures to combat terrorism,
- The Consolidated List setting out the persons and entities designated by the Australian Foreign Minister for the purposes of UNSCR 1373

(b) The Purchaser warrants that the Purchaser will not re-supply the Goods to any Designated Person.

(c) The Purchaser understands that exports and re-exports of the Goods and any related software, service, technical assistance, training and related technical data, and any media in which any of the foregoing is contained ("Items") may be subject to Australian, EU, U.S. and other foreign trade controls, customs, antiboycott and economic sanctions laws, regulations, rules and orders ("Export Control Laws").

(d) Where the supply of Goods to a Purchaser is subject to Export Control Laws, in addition to any other remedy it may have,

Supplier may suspend or cancel the export, delivery, installation, or any maintenance or repair service of any Item if (a) the Supplier has not received all export-related documentation requested by the Supplier, including end-user certificates, (b) the Supplier has not received the governmental approvals that the Supplier deems to be required, or (c) the Supplier believes that such activity may contravene any Export Control Laws or the Supplier's own compliance policies.

(e) The Purchaser shall only use the Items for nonmilitary, peaceful purposes. The Purchaser shall not export, re-export or otherwise transfer or provide any Item in contravention of any Export Control Laws or any end-user certificate provided by the Purchaser, including to an embargoed or otherwise sanctioned country, to any Designated Person, or for a prohibited end-use (such as research on or development of chemical, biological, or nuclear weapons, unmanned air vehicles or missiles, or nuclear explosive or fuel cycle activities). The Purchaser must notify Supplier before providing any technical data to any third party that is controlled under any Export Control Law. The Supplier will not be liable to the Purchaser for any loss or expense if the Purchaser fails to comply with any Export Control Law.