J.L.LENNARD PTY LTD STANDARD TERMS & CONDITIONS OF SALE

1. Definitions and Interpretation

1.1 "**Buyer**" means the person named on the Quote Schedule.
1.2 "**Buyer's Premises**" means the premises stated on the Quote Schedule.
1.3 "**Commissioning**" means the installation or commissioning of the Goods at the Buyer's Premises or as otherwise agreed in writing.
1.4 "**Conditions**" means the particulars in the Quote Schedule and these Conditions of Sale.
1.5 "**Consequential Loss**" means any loss, damage or costs incurred by a party or any other person that is indirect or consequential, as well as loss of revenue; loss of income; loss of business; loss of profits; loss of production; loss of or damage to goodwill or credit; loss of business reputation, future reputation or publicity; loss of use; loss of interest; losses arising from claims by third parties; loss of or damage to credit rating; loss of anticipated savings and/or loss or denial of opportunity.
1.6 "**Contract**" means the agreement binding the Buyer and Seller in respect of the Goods created when the Buyer signs the Quote Schedule and includes:
(a) the Quote Schedule; and
(b) the Conditions; and
(c) any later variation or addition to them agreed by the parties in writing.
1.7 "**Delivery Date**" means the date estimated for delivery of the Goods to the Buyer's Premises specified on the Quote Schedule.
1.8 "**Goods**" means the goods referred to on the front page of this document.
1.9 "**PPSA**" means the Personal Property and Securities Act (Cth)
1.10 "**Quote Schedule**" means the schedule at the front of this document.
1.11 "**Seller**" means J.L.Lennard Pty Ltd and/or other related body corporate named on the front page of the Quote Schedule.
1.12 "**Services**" means the Commissioning and/or the Training as agreed in the Contract.
1.13 "**Suppliers**" means suppliers and/or manufacturers of the Goods and/or any part or parts of the Goods.
1.14 "**Training**" means the training of the operation of the Goods provided by the Seller as agreed in the Contract.
1.15 (a) Any notice or agreement given pursuant to the Contract must be in writing (and in the case of the Seller, signed by a duly authorized officer of the Seller) to be effective.
(b) All notices to be served upon the Buyer are duly served if left at or sent by ordinary prepaid post to the last known address of the Buyer and the Buyer is deemed to have received any notice two (2) days after posting.
(c) The Buyer must not assign any right or obligation under the Contract without the Seller's prior consent.
(d) No waiver by the Seller of any default by the Buyer in the performance of any obligation or condition of the Contract constitutes a waiver of that or any other obligation or condition.
(e) The singular includes the plural and vice versa, words importing any gender include every other gender and where there is more than one Buyer the Buyers are bound to the Seller jointly and severally.

2. Contract

2.1 The Contract:
(a) constitutes the entire contract between the Buyer and the Seller;
(b) supersedes all prior written or verbal communications;
(c) is not varied, qualified or restricted by previous dealings between the Buyer and the Seller or by anything contained in the Buyer's purchase order or other document (unless agreed in writing by the Seller).

3. Offers and Quotations

3.1 The Buyer must provide to the Seller all information necessary to enable performance of the Contract and must pay the Seller on demand any costs incurred by the Seller arising from any error, misrepresentation, alteration or omission in that information.
3.2 The Buyer warrants that it has made due enquiries and satisfied itself that the Goods ordered by the Buyer are sufficient for the Buyer's purposes.
3.3 All quotations submitted to the Buyer may be varied by the Seller at any time prior to the Contract.
3.4 Any weight, dimensions, capacities, prices, performance ratings and other data included in catalogues, prospectuses, circulars, advertisements, illustrations or price lists do not form part of the contract.
3.5 The Buyer acknowledges that the Seller's Suppliers may revise and modify designs and/or specifications for the Goods at any time. The Buyer will accept the Goods as revised or modified by the Suppliers and will not make an objection or claim nor will the Buyer cancel or vary the Contract because the Goods have been revised or modified.

4. Cancellation/Variation of Orders

4.1 The Buyer may cancel or vary the Contract only if agreed by the Seller. Preliminary conditions to any agreement by the Seller to a request by the Buyer for cancellation or variation will include:
(a) that the Buyer reimburses the Seller for any costs or loss (including loss of profit) incurred by the Seller; and
(b) that the Goods have not been sent by the Suppliers.

5. Prices

5.1 The Buyer acknowledges that prices quoted for the Goods are based on:
(a) costs quoted to the Seller by the Suppliers at the quotation date specified on the Quote Schedule; and
(b) the Vendor's estimate of tariffs and duties payable on the Goods; and
(c) where the Goods are imported, the rate of exchange at the quotation date.
5.2 The Buyer acknowledges that the Price will vary where:
(a) the costs payable by the Seller to Suppliers is varied; and
(b) any government department assesses tariffs, taxes or duties payable on the Goods differently from the sum estimated by the Seller;
(c) the rate of exchange at the date of invoicing varies from the rate of exchange at the quotation date.
5.3 The Buyer must pay GST and any other impost or charge on the Goods and/or the Services in addition to the Price incurred by the Seller.
5.4 The Price does not include the provision of electricity, water and drainage or other facility or service for the operation of the Goods. The Buyer must arrange these at the Buyer's cost.

6. Terms of Payment

6.1 The Buyer must pay to the Seller the Price and all other amounts due under the Contract on delivery of the Goods unless the Seller otherwise agrees in writing.
6.2 Where the Buyer does not make a payment by the time specified in the Contract the Buyer must pay to the Seller, in addition to amounts payable pursuant to clause 6.1, interest calculated on daily balances from the day upon which payment should have been made up to and including the date of full and final payment at the rate 1% above the overdraft rate quoted by the Seller's bank at the date of calculation. If the Contract would otherwise be a credit contract as defined in the Consumer Credit Code the provision of credit by the Seller under the Contract is limited to a total period not exceeding 62 days. Nothing in this clause imposes an obligation on the Seller to extend credit to the Buyer for any period of time or at all.
6.3 Payment by the Buyer in accordance with the Contract and without set-off or counter claim other than as specifically stated in the Contract, is an essential term of the Contract.
6.4 The Buyer indemnifies the Seller against all costs (including debt recovery and legal costs on a solicitor/client basis) incurred by the Seller as a result of the Buyer's breach of this clause 6.

7. Delivery and Risk

7.1 The Seller will make all reasonable efforts to deliver the Goods to the Buyer's Premises on the Delivery Date but the Seller is not liable to the Buyer or any party claiming through the Buyer if delivery is not made on the Delivery Date or any alternate date.
7.2 The Buyer must not cancel the order for the Goods or cancel or vary the Contract if the Goods are not delivered on the Delivery Date or any alternate date.
7.3 The Seller can suspend or delay deliveries of the Goods where the Seller is prevented or hindered from delivery of the Goods by causes beyond the reasonable control of the Seller.
7.4 Where the Goods are delivered by partial shipments, each partial shipment is deemed to be a separate contract on the terms of the Contract, except that where the Seller does not deliver any of the Goods on the Delivery Date or any alternate date the Buyer cannot:-
(a) rescind, terminate or repudiate any other contract with the Seller relating to the Goods; or
(b) refuse or delay payment of the Price in relation to any of the Goods the delivery of which has been completed.
7.5 The Buyer must inspect the Goods upon delivery and give notice to the Seller within seven (7) days after delivery of the Goods of any defect or other claim relating to the Goods. The Seller must be given a reasonable opportunity to inspect the Goods where such notice is given. Failure to give such notice within the seven (7) day period will constitute an irrevocable acceptance of the Goods by the Buyer.
7.6 The Buyer must not refuse delivery of the Goods for minor defects or defects covered by the Seller's warranties set out in **clause 10**.
7.7 Unless the Seller agrees otherwise in writing, the cost of delivery of the Goods to the Buyer's Premises will be payable by the Buyer.
7.8 If agreed in writing by the Seller, the Seller may act as agent for the Buyer for delivery of the Goods to an agreed location on condition that all carriage and insurance costs incurred by the Seller are paid by the Buyer.
7.9 The Seller may at its discretion either by itself or by contracting with a carrier cause delivery of the Goods to be made to the Buyer's Premises or as otherwise agreed.
7.10 The risk in the Goods passes to the Buyer upon delivery of the Goods to either the carrier or to the Buyer's Premises or other agreed place of delivery.
7.11 The Seller is not liable for any damage caused to the Goods in transit or any consequential loss.
7.12 The Buyer must, at the Buyer's cost, provide all labour, equipment and access at the place of delivery and must offload the Goods without delay.

8. Title

8.1 Despite risk in the Goods passing to the Buyer as a provided in **clause 7.10** title and property in the Goods passes to the Buyer when full payment for the Goods (including any additional amounts payable by the Buyer to the Seller as provided in the Contract) is received by the Seller.
8.2 Until title to the Goods passes, the Buyer is a bailee of the Goods and unless otherwise agreed by the Seller the Buyer must separately store the Goods at the Buyer's premises or other location agreed in writing by the Seller and must be clearly marked as the property of the Seller. If payment is not made according to the contract the Seller may by its employees or agents enter any premises where the Seller believes the Goods may be situated and retake possession and dispose of or otherwise deal with the Goods as determined by the Seller at its sole discretion and the Buyer must not claim against the Seller in respect of such entry, disposal or dealing.

8.3 The Buyer grants the Seller, its employees and agents an irrevocable licence to enter premises occupied by the Buyer or any related body corporate or agent of the Buyer for the purpose of exercising the Seller's rights specified in **clause 8.2**. The Seller may use reasonable force to take possession of the Goods without liability for trespass, negligence or payment of compensation to the Buyer or any related body corporate or agent of the Buyer.

8.4 Until the Buyer pays the full price for the Goods to the Seller the Buyer may only sell the Goods in the ordinary course of the business as agent for the Seller. The Buyer must hold the proceeds of any such sale for and to the account of the Seller separate from other money. The proceeds must be paid to the Seller promptly.

9. Personal Property Securities Act

9.1 The Buyer is taken to have entered into the Contract as an ongoing supply agreement and that all orders placed by the Buyer are taken to be placed under (and form part) of such an ongoing supply agreement.

9.2 If at any time the Seller determines that these terms (or any of the transactions contemplated by or under it) creates a security interest in its favour over any personal property, the Seller may apply for any registration, or give any notification, in connection with that security interest and the Buyer must promptly, upon the Seller's request, do any thing (including, without limitation, signing and producing documents, getting documents completed or signed, obtaining consents and supplying information) to:

(a) provide more effective security over the relevant personal property;

(b) ensure that any such security interest in favour of the Seller:

(i) is at all times enforceable, perfected (including, where applicable, by control as well as by registration) and otherwise effective; and

(ii) has the priority required by the Seller which, unless the Seller agrees in writing otherwise, is first priority.

(c) enable the Seller to prepare and register a financing statement or a financing change statement or give any notification in connection with that security interest; and

(d) enable the Seller to exercise any of its rights or perform any of its obligations in connection with any such security interest or under the PPSA.

(e) All costs and expenses reasonably incurred and arising as a result of actions taken by either party pursuant to this **clause 9** will be for the account of the Buyer. Within 7 days of a written request, the Buyer must pay to the Seller any costs or expenses incurred or to be incurred in connection with this **clause 9**.

(f) If Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interest created under these terms, the Buyer agrees that the following provisions of the PPSA will not apply:

(i) section 95 (notice of removal of accession), to the extent that it requires the Seller to give a notice to the Buyer.

(ii) section 121(4) (enforcement of security interests in liquid assets – notice to grantor);

(iii) section 125 (obligation to dispose of or retain collateral);

(iv) section 130 (notice of disposal), to the extent that it requires the Seller to give a notice to the Buyer;

(v) paragraph 132(3)(d) (contents of statement of account after disposal);

(vi) subsection 132(4) (statement of account if no disposal);

(vii) section 142 (redemption of collateral); and

(viii) section 143 (reinstatement of security agreement).

9.3 The Seller does not need to give the Buyer any notice required under the PPSA (including, without limitation, a notice of a verification statement under section 157 of the PPSA) unless the requirement for the notice cannot be excluded.

10. Statutory Rights and Warranties

10.1 The warranties given by the Seller to the Buyer are limited to those contained in the Contract and to the extent permitted by law, the Supplier gives no warranty as to the quality, condition, colour, merchantability or fitness for purpose of the Goods and all such implied warranties are excluded.

10.2 Where the Seller has provided express or implied warranties, the Seller's liability for breach will, to the extent permitted by law , be limited, at the option of the Seller, to any one or more of the following:

(a) if the breach relates to the Goods:

(i) replacement of the Goods or the supply of equivalent goods;

(ii) repair of the Goods;

(iii) payment of the costs of replacing the Goods or of acquiring equivalent Goods; or

(iv) payment of the cost of having the Goods repaired; and

(b) if the breach relates to the Services:

(i) supplying the Services again; or

(ii) payment of the cost of having the Services supplied again.

10.3 The Seller excludes all liability for Consequential Loss.

10.4 In respect of repairs and replacements, liability for the provision of which has been accepted by the Seller, the Seller must pay for spare parts but will not pay freight charges or any amount referred to in **clause 10.3**. The removal of the defective part and the installation of any repaired or replacement part must be carried out by the Buyer at its own expense. Where any defective part has been replaced, that part becomes the property of the Seller.

10.5 The provisions of **clauses 9.1** to **9.4** are subject to **clause 10**.

11. Indemnities and Exclusions to Warranties

11.1 The Buyer must use and maintain the Goods in accordance with the user's manual, technical specifications, service guidelines and any other information supplied to by the Supplier or Seller. The Buyer agrees that the Seller is not liable and indemnifies the Seller for any loss or claim that arises out of a breach of this clause 10.1 by the Buyer.

11.2 The Buyer acknowledges that the Seller does not design the Goods and obtains the Goods from its Suppliers. The Seller, to the extent permitted by law, does not accept any liability in relation to the design and suitability of the Goods.

11.3 To the extent permitted by law, the Seller will not remedy any defects in the Goods while the Buyer is in default of the Contract to any extent.

11.4 The Buyer indemnifies the Seller against any liability, loss or expense arising directly or indirectly from the use or operation of the Goods or in connection with the provision of the Services.

11.5 The Buyer will keep the Seller fully indemnified against all losses and expenses (including solicitor/client legal expenses) which the Seller may suffer or incur to the extent the loss arose or the expense accrued due to the failure by the Buyer to observe its obligations under the contract, including losses and expenses arising from the Seller entering the Buyer's premises and repossessing the Goods as provided for in **clause 8** and costs incurred in taking any legal action against the Buyer.

12. Termination

12.1 Termination of the Contract does not prejudice the rights of the parties accrued under the Contract to the time of termination.

13. Default

13.1 If the Buyer defaults under the Contract or commits any act of bankruptcy or, being a company, enters into liquidation or provisional liquidation whether compulsory or voluntarily other than for the purpose of amalgamation or reconstruction or compounds with its creditors generally or has a receiver or receiver and manager or administrator appointed over all or part of its assets, suffers any similar action in consequence of debt or becomes unable to pay its debts as they fall due, or passes a resolution for winding-up other than for the purpose of reconstruction or a petition is presented for its winding-up, the Seller may without prejudice to its own rights either suspend further deliveries of the Goods and/or provision of the Services, require payment in advance for all the Goods and/or provision of the Services or terminate the Contract or any other contract by notice to the Buyer.

14. Commissioning of Goods

14.1 If specified in the Quote Schedule or otherwise agreed in writing by the Seller as part of the Contract, the Seller will carry out the Commissioning of the Goods.

14.2 The Buyer will make available the environment as specified by the Seller, including location and quality of electricity and gas supply, as appropriate, and all assistance, access, information, personnel and items required by the Seller, in its opinion, to facilitate the carrying out of the Commissioning at the times and places agreed by the Seller. Failure by the Buyer to comply with this **clause 14.2** will, at the option of the Seller:

(a) effect an immediate and complete release of the Seller's obligations to carry out the Commissioning or any part of it at the agreed times and places, or at all; and

(b) entitle the Seller to charge such reasonable resulting additional costs, including additional site attendances, to the Buyer.

14.3 If an amount is specified in the Quote Schedule, or has otherwise been agreed as part of the Contract, as to a Commissioning Cost, the Buyer will pay that amount in addition to the Price. The provisions of **clauses 6.1** to **6.3** will apply in relation to both the Price and the Commissioning Cost.

14.4 If no amount is specified in the Quote Schedule or elsewhere in the Contract as to a Commissioning Cost, no amount in addition to the Price will be payable by the Buyer for the carrying out of the Commissioning.

14.5 The Buyer indemnifies and will keep indemnified the Seller against all loss or damage to property and/or injury or death to persons occurring in connection with the carrying out of the Commissioning of the Goods.

14.6 No failure by the Seller for any reason to carry out the Commissioning at the agreed times and/or places, or at all, will relieve the Buyer from any obligations under the Contract.

15. Training

15.1 If specified in the Quote Schedule or otherwise agreed by the Seller as part of the Contract, the Seller will provide the Training to the Buyer's nominated personnel in relation to the operation of the Goods.

15.2 The Buyer will make available all assistance, information, personnel and items required by the Seller, in its opinion, to facilitate the Training at the times and places agreed by the Seller. Failure by the Buyer to comply with this **clause 15.2** will, at the option of the Seller, effect an immediate and complete release of the Seller's obligations to provide any Training or any part thereof to them at the agreed times and places, or at all.

15.3 If an amount is specified in the Quote Schedule, or has otherwise been agreed as part of the Contract, as to a Training Cost, the Buyer will pay that amount in addition to the Price. The provisions of **clauses 6.1** to **6.3** will apply in relation to both the Price and the Training Cost.

15.4 If no amount is specified in the Quote Schedule or has otherwise been agreed as part of the Contract as to a Training Cost, no amount in addition to the Price will be payable by the Buyer for the provision of the Training.

15.5 The Buyer indemnifies and will keep indemnified the Seller against all loss of or damage to property and/or injury or death to persons occurring in connection with the Training.

15.6 No failure by the Seller to provide the Training at the agreed times or places, or at all, will relieve the Buyer from its obligations under the Contract.

16. Governing Law

16.1 This Contract is governed by and construed in accordance with the laws of New South Wales and the Buyer irrevocably submits to the jurisdiction of the Courts of that State.