

GENERAL CONDITIONS FOR THE SUPPLY OF GOODS & SERVICES AND SERVICES

1. Definitions

Unless the context otherwise requires:

Australian Consumer Law means the Australian Consumer Law that forms part of the *Competition and Consumer Act 2010* (Cth).

Business Days means a day (other than a Saturday, Sunday or public holiday) in the state of supply.

Buyer means the relevant customer of the Seller as specified in the order.

Claims means all claims, suits, proceedings, actions, demands, litigation, judgments, losses, costs (including legal costs and disbursements on a full indemnity basis and any debt collection agency fees on a full indemnity basis), damages, interest, charges, expenses and all other liabilities of every kind.

Conditions means the terms and conditions in this document.

Confidential Information includes: (i) all technical or commercial know-how, specifications, inventions, processes and initiatives; (ii) any information or documentation that a party specifies is confidential; (iii) any information or documentation relating to employees; and (iv) any information that is "**personal information**" as defined in the Privacy Act.

Contract means the relevant contract for the sale of Goods and/or the supply of Services between the Seller and the Buyer arising from the Order Acknowledgement.

Event of Default means: (i) an Insolvency Event; or (ii) breach of an essential term of the Contract; or (iii) breach of a non-essential term of the Contract that cannot be remedied; or (iv) breach of a non-essential term of the Contract that can be remedied but which is not remedied within 14 days of a written request to do so.

Force Majeure Event means an event beyond the reasonable control of the Seller including strikes, lock-outs or other industrial disputes (whether involving the workforce of the Seller or any other party), failure of a utility service or transport network, act of God, pandemic or epidemic, war, riot, terrorism, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, default of suppliers or subcontractors.

Goods & Services means the Goods & Services agreed to be sold by the Seller to the Buyer pursuant to an Order Acknowledgement.

GST means any applicable Goods and Services Tax.

Insolvency Event means in respect of a party any of: (i) a receiver, receiver and manager, liquidator, provisional liquidator, controller or any form of external administrator being appointed to or over it or in respect of any of its assets; or (ii) entering into a scheme, arrangement, agreement or compromise with its creditors by it; or (iii) calling a meeting of creditors or becoming bankrupt or insolvent or having a winding-up or bankruptcy petition presented against it; or (iv) an application or order being made to a court or a resolution being passed for its winding-up; or (v) anything analogous or having a substantially similar effect to any of the foregoing events specified under the laws of any applicable jurisdiction.

Intellectual Property Rights means all copyright, database rights, semi-conductor topography rights, design rights, trademarks, trade names, patents, domain names and any other intellectual property rights of any kind (whether or not registered and whether or not capable of registration) subsisting anywhere in the world.

Order Acknowledgement means the written acceptance by the Seller to the Buyer in respect of an order placed by the Buyer with the Seller, with that order being deemed to incorporate these Conditions.

Privacy Act means the *Privacy Act 1988* (Cth) and the regulations thereunder.

Seller means TDG Environmental ACN 621 479 981 its successors and assigns.

Services means the services agreed to be supplied by the Seller to the Buyer pursuant to an Order Acknowledgement.

Specification for Goods & Services means the relevant specification that is agreed between the Seller and the Buyer in the Order Acknowledgement.

Term means the period (if any) during which the Goods and/or Services are to be provided by the Seller to the Buyer as specified in the Order Acknowledgement.

2. Interpretation

- (a) The construction, validity and performance of the Contract shall be governed by the laws in the state of supply.
- (b) Any claim, proceeding or dispute arising from or relating to the Contract is subject to the non-exclusive jurisdiction of, and will be determined by, the courts in the state of supply.
- (c) Any invalidity or unenforceability of any provision in a Contract shall in no way affect the validity or enforceability of the remaining provisions in a Contract. Any such provision shall be deemed to be modified to the minimum extent necessary to make it valid or enforceable but if such modification is not possible then the relevant provision shall be deemed severed.
- (d) Unless the context otherwise requires: (i) headings are for convenience only and do not affect interpretation; (ii) words in the singular include the plural and vice-versa; (iii) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of the Contract or any part of it; (iv) the words "**includes**" and "**including**" and similar expressions are not words of limitation; (v) all references to currency are to the lawful currency of Australia; (vi) where the day on which any thing is to be done is not a Business Day, that thing must be done on the next Business Day; and (vii) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued after that statute.

3. Formation of Contracts and Application of Conditions

- (a) All Contracts shall be deemed to incorporate these Conditions.
- (b) Subject to the terms of these Conditions, any variation to these Conditions or a Contract shall have no effect unless expressly agreed in writing by the Seller and the Buyer.
- (c) An order placed with the Seller (even if based on a quotation) is subject to acceptance by the Seller. The Seller accepts the order by confirming acceptance to the Buyer with an Order Acknowledgement.
- (d) Subject to the terms of these Conditions, the Contract shall constitute the entire agreement between the Seller and the Buyer in respect of its subject matter and the Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller that is not set out in writing in the Contract.
- (e) These Conditions apply to the Contract to the exclusion of all other terms and conditions that the Buyer shall seek to impose or incorporate, and to the fullest extent permitted by law all terms implied by use, trade, custom or course of dealing are hereby excluded.
- (f) The Buyer must promptly provide all instructions, documentation and information reasonably requested by the Seller relating to the Contract.
- (g) The Buyer shall ensure that any descriptions or specifications of the Goods and/or Services are completely and accurately contained in the Buyer's order.
- (h) If there is any inconsistency between these Conditions and an Order Acknowledgement, then the Order Acknowledgement shall prevail to the extent of the inconsistency.

4. Quotations

- (a) Any quotation issued by the Seller shall not constitute an offer and is given on the basis that no Contract shall come

into existence unless and until the Seller issues an Order Acknowledgement to the Buyer.

- (b) The Buyer may use the quotation to submit an order to the Seller; however the order is subject to acceptance by the Seller. The Seller can amend or withdraw a quotation at anytime prior to an order being accepted. Subject to the foregoing, a quotation is valid for the period specified within it or, if no period is specified, 30 days from the date of the quotation.

5. Goods & Services

- (a) The Goods & Services are described in the Specification for Goods & Services. The Goods & Services shall comply with the Specification for Goods & Services in all material respects. Any stated dimension or weight set out in the Specification for Goods & Services is an estimate only.
- (b) All performance figures, descriptions (other than any description set out in the Specification for Goods & Services), drawings and samples of Goods & Services are approximate only being intended to serve merely as a guide. The Seller shall not be liable for their accuracy and they shall not form part of the Contract. No Contract shall be a contract by sample.
- (c) The Seller may alter the Specification for Goods & Services for the purpose of making what it considers to be improvements to the Goods & Services or if required by any applicable statutory, legal or regulatory requirement.
- (d) All drawings, designs, and quotations for which Goods & Services are not subsequently ordered by the Buyer shall remain the property of the Seller and be treated as confidential by the Buyer and not used in any way. The Seller shall have no liability in relation to any such drawings, designs or quotations.
- (e) If the Seller agrees to provide spare or replacement parts and/or consumables as part of the Goods & Services, such supply will be strictly on the basis of these Conditions.

6. Delivery, Risk and Title

- (a) A delivery date is an estimate only and time for delivery shall not be of the essence. Whilst the Seller will use reasonable endeavours to meet a delivery date or, if there is no delivery date, to make delivery within a reasonable time, the Seller is not liable for any loss or damage of any kind, including for negligence, arising out of any failure to meet a delivery date or to make delivery within a reasonable time.
- (b) Delivery of the Goods & Services occurs by the Seller delivering the Goods & Services to the Buyer, or the Goods being collected by or on behalf of the Buyer from the Seller, or the Seller agreeing to store the Goods. Risk in respect of loss or damage to the Goods & Services passes to the Buyer upon delivery. The Buyer must not delay taking delivery of the Goods.
- (c) The Seller may deliver the Goods & Services by instalments, each instalment to be deemed to be a separate Contract. Without limiting the other provisions herein, no failure or defect in delivery in respect of any Contract or instalment shall entitle the Buyer to terminate any other Contract or instalment.
- (d) Despite the time when risk passes, title in the Goods & Services shall not pass to the Buyer until receipt by the Seller in cleared funds of payment in full (including payment of any GST, taxes and duties, storage fees, delivery and packaging fees, and default interest) of all amounts payable by the Buyer to the Seller in respect of the Goods & Services.

7. Instructions and Safety

- (a) The Buyer must strictly observe the terms of all manuals, instructions and policies of the Seller relating to the Goods and/or Services including those relating to installation, use, storage, maintenance and repair.

8. Prices, GST and Export Sales

- (a) Unless otherwise specified by the Seller, the prices stated in the Seller's quotations are exclusive of GST and therefore GST must be added to the price.

- (b) Unless otherwise specified by the Seller, the prices stated in the Seller's quotations are exclusive of all taxes and duties that may or become payable in respect of export sales and therefore such taxes and duties must be added to the price.
- (c) The Seller may increase the price of the Goods and/or Services by written notice to the Buyer at any time before delivery occurs to reflect any increase in the cost of supplying the Goods & Services or Services due to any factor beyond the control of the Seller (including foreign exchange fluctuations, increases in taxes and duties, increases in labour costs, and/or increases in the cost of acquiring or manufacturing the Goods or performing the Services), or any request by a Buyer to change the delivery date(s), quantities or specifications of the Goods and/or Services ordered, or any delay caused by any instructions of the Buyer in respect of the Goods and/or Services, or failure by the Buyer to give the Seller adequate, timely and accurate information or instructions in respect of the Goods and/or Services.

9. Supply of Services

- (a) The Seller shall provide the Services in accordance with the relevant installation and maintenance instructions in all material aspects.
- (b) Any stated time period or date for the Services is an estimate only. The Seller shall use its reasonable endeavours to meet any time period or date specified in the Order Acknowledgement. If no time period or date is specified, then the Seller shall provide the Services within a reasonable time. To the fullest extent permitted by law, the Seller is not liable to the Buyer for any loss or damage of any kind suffered by the Buyer arising out of any failure by the Seller to perform the Services and/or supply or install the Goods on or by the agreed or specified date or within a reasonable time including loss or damage due to the negligence of the Seller.
- (c) Any figures given by the Seller in respect of the performance, measurements, power, capacities or any other particulars relating to the Services and/or Goods are guides only and, to the fullest extent permitted by law, the Seller is not liable for any inaccuracy in that regard.
- (d) The Seller reserves the right to employ subcontractors to perform all or any part of the Services (including, without limitation, commissioning, installing, maintaining or repairing the Goods & Services) on behalf of the Seller.
- (e) The Seller reserves the right to replace, at the Buyer's expense, all or any part of the Goods & Services which are unserviceable or inefficient as the Seller considers reasonably necessary to perform the Services in accordance with the Contract.
- (f) Subject to these Conditions, the Seller may recondition any part of the Goods & Services that, in the reasonable opinion of the Seller, cannot be suitably or economically repaired onsite. In that case, the Seller shall provide the Buyer with an estimate of reconditioning charges. If the Buyer does not agree to have the Goods & Services reconditioned, the Seller may amend the scope of the Services in its absolute discretion.

10. Buyer's Premises

- (a) The Buyer must provide the Seller with any information which the Seller may reasonably require to provide the Services. The Buyer must ensure that such information provided to the Seller is accurate and complete in all material respects.
- (b) The Buyer must, at its own expense, obtain and maintain all necessary licences, permits and consents which are reasonably required by the Buyer in respect of the Services to be performed, before the date on which the Services are supplied by the Seller.
- (c) The Buyer must permit the Seller, its employees, agents, consultants and/or subcontractors full and free access to the premises wherein the Services are to be performed, subject to the Seller, its employees, agents, consultants and subcontractors complying with the Buyer's reasonable

requirements and directions in respect of work health and safety rules. If at the time of any scheduled visit to the premises, the Seller, its employees, agents, consultants and/or subcontractors are unable to gain access to the premises and the Goods & Services, the Seller reserves the right to charge for the time spent attending the premises and for the cost of arranging any subsequent visit.

- (d) If the Seller detects a hazard at the place where the Services are to be performed or the Goods & Services supplied or installed then: (a) the Buyer is responsible for remediating or isolating the hazard so that the Services can be safely performed or the Goods & Services supplied or installed and the Seller may suspend its obligations and charge for the time spent attending the premises until such hazard has been safely remediated or isolated; and (b) despite sub-clause (a), the Seller may, but is not obliged to, take such action as is considered necessary by the Seller to remediate or isolate the hazard.
- (e) To the fullest extent permitted by law, the Buyer acknowledges and agrees that the Seller shall at no time own, occupy or control (or be deemed to control) any part of the Buyer's premises and/or hold or be fixed with any duties or liabilities under applicable laws or regulations in respect of work health and safety.

11. Payment and Interest

- (a) The Seller may issue an invoice to the Buyer in respect of part or all of the Contract at any time on or after the date the Contract is entered into, and that invoice is payable within the timeframe stated in the invoice or, if no timeframe is specified, within 7 days from the date of the invoice.
- (b) All times for payment by the Buyer are of the essence.
- (c) The Buyer must make all payments in full without any deduction, set-off, counterclaim, discount, or abatement unless required by law (and then only to the extent required by law).
- (d) No payment is taken to be made until the Seller has received cleared funds.
- (e) Notwithstanding anything to the contrary in these Conditions, all amounts payable to the Seller in respect of the Contract become immediately due and payable on termination of the Contract.

12. Cancellation, Suspension and Termination

- (a) The Seller may terminate a Contract at any time before delivery occurs (or before the first delivery occurs if by instalments) by notifying the Buyer and without being liable to the Buyer for any loss or damage of any kind suffered or incurred by the Buyer.
- (b) The Buyer cannot cancel a Contract except with the written consent of the Seller and, if consent is given, the Buyer must comply with any cancellation terms specified by the Seller at the relevant time including any cancellation charges payable.
- (c) If the Buyer does not comply with its obligations then, in addition to any other rights or remedies of the Seller (including exercising a right of termination after suspension), the Seller may cease to provide or limit the amount of credit available to the Buyer and/or suspend performance of its obligations under a Contract until the Buyer complies with its obligations and in that respect, the Seller is not liable to the Buyer for any loss or damage of any kind suffered or incurred by the Buyer and the Seller is entitled to a reasonable extension of any timeframe applicable to the performance of its obligations arising from or relating to such suspension.
- (d) If an Event of Default occurs in respect of a party, then the other party may terminate the Contract by written notice to the party in default.

13. Indemnity

- (a) To the fullest extent permitted by law, the Buyer indemnifies the Seller from and against all Claims suffered or incurred by the Seller arising from or relating to any breach of a Contract by the Buyer.

14. Intellectual Property Rights

- (a) All Intellectual Property Rights arising from or relating to the Contract including in respect of all plans, specifications and drawings are the sole property of the Seller and the Buyer obtains no right, title or interest in respect of same except a limited non-exclusive right to use the Goods & Services for the purpose for which they are provided.
- (b) If the Buyer provides any plans, specifications or drawings to the Seller, then the Buyer warrants to the Seller that they do not infringe the Intellectual Property Rights of any third party.

15. Limitation and Exclusion of Liabilities and Australian Consumer Law

- (a) If the Australian Consumer Law does not apply to the relevant Goods and/or Services then to the fullest extent permitted by law: (i) the Seller is not liable to the Buyer for any exemplary damages of any kind or for any consequential, special, incidental or other indirect loss or damage of any kind including any loss of data or other equipment or property, economic loss or damage, incurring of liability for loss or damage of any nature whatsoever suffered by third parties (including in each case incidental and punitive damages), or any loss of actual or anticipated profit, interest, revenue, opportunity, anticipated savings or business or damage to goodwill irrespective of whether or not the Seller was made aware of the possibility of such loss; and (ii) subject to the foregoing, the Seller's maximum total liability to the Buyer for breach of its obligations to the Buyer (including due to negligence) are at the option of the Seller limited to, in the case of Goods & Services, repairing, replacing or resupplying the Goods & Services or paying for the cost of repairing, replacing or resupplying the Goods & Services or refunding the amounts paid by the Buyer to the Seller for the Goods & Services and, in the case of Services, re-supplying the Services or paying for the cost of re-supplying the Services or refunding the amounts paid by the Buyer to the Seller for the Services.
- (b) If the Australian Consumer Law does apply to the relevant Goods and/or Services then: (i) the Seller is only liable to the Buyer for any consequential loss or damage (and not any other special, incidental or other indirect loss or damage or exemplary damages of any kind) to the extent required by the Australian Consumer Law; (ii) the Seller's liability to the Buyer for breach of its obligations to the Buyer are at the option of the Seller limited to, in the case of Goods & Services, replacing or repairing the Goods & Services or reimbursing the Buyer for repairing or replacing the Goods and, in the case of Services, re-supplying the Services or reimbursing the Buyer for paying someone else to supply the Services; (iii) these Conditions must be read subject to any terms of the Australian Consumer Law that cannot be modified or excluded; and (iv) the following applies:

Important Note

Our Goods and/or services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled (i) to cancel your service contract with us; and (ii) to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with Goods and/or Services. If a failure with the Goods and/or Services or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the Goods and/or Services and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Goods and/or Service.

- (c) In respect of repairs, the Seller discloses that Goods and/or Services presented for repair may be replaced by refurbished Goods and/or Services of the same type rather

than being repaired. Refurbished parts may be used to repair the Goods and/or Services.

16. Force Majeure Event

- (a) The Seller is not liable to the Buyer in respect of any delay or failure to perform the Seller's obligations under the Contract arising from or relating to a Force Majeure Event. If the Force Majeure Event continues for a period of 30 days or more then the Seller may, without limiting its other rights or remedies, terminate the Contract with the Buyer immediately by written notice to the Buyer.

17. Confidentiality and Privacy

- (a) A party receiving Confidential Information of the other party must: (i) keep that Confidential Information in strict confidence; (ii) only disclose that Confidential Information to those of its employees, agents and contractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract; (iii) ensure that any information that is "personal information" as defined in the Privacy Act is used only in compliance with the terms of this clause and in accordance with that legislation and the National Privacy Principles as defined in that legislation; and (iv) that such employees, agents and contractors comply with the obligations imposed on the receiving party under these Conditions. Despite the foregoing, the receiving party may also disclose that Confidential Information to the extent necessary in order to comply with any applicable law, court order or rules of any applicable stock exchange that the receiving party is subject to. This clause does not merge on termination or completion of the Contract.

18. Miscellaneous

- (a) The Seller's rights under these Conditions are in addition to any other rights or remedies the Seller may have at law.
- (b) If the Buyer comprises two or more persons, their obligations are joint and several.
- (c) The Buyer cannot assign, transfer, mortgage, charge, sub-contract or otherwise dispose of or deal with its rights or obligations under any Contract without the Seller's prior written consent. Any such action taken or purported to be taken by the Buyer without the Seller's prior written consent is void.
- (d) The Seller can assign, transfer, mortgage, charge, sub-contract or otherwise dispose of or deal with its rights or obligations under any Contract without the consent of the Buyer.
- (e) A waiver by the Seller will only be effective if it is in writing. Any failure or delay by the Seller in exercising, or any partial exercise by the Seller, of any right or remedy does not constitute a waiver of that or any other right or remedy. No single or partial exercise of any right or remedy by the Seller shall prevent the further exercise of that or any other right or remedy.
- (f) A waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- (g) Subject to these Conditions, no term of the Contract shall be enforceable by any person that is not a party to it.
- (h) The termination or completion of a Contract does not affect any provision of the Contract expressed or capable of operating or having effect subsequent to termination or completion and is without prejudice to any accrued right or remedy of a party in relation to any breach of or default by the other party occurring prior to termination or completion.
- (i) Each party must execute all documents and perform all acts necessary to give full effect to the Contract.

19. Notices

- (a) Any notice required to be in writing can be given by way of personal delivery, post, facsimile or email, and will be deemed to be received unless the contrary is proven: (i) in the case of personal delivery, at the time of delivery; (ii) in the case of a letter where the country of origin and the country of destination are the same, on the third Business

Day after posting the letter by pre-paid mail; (iii) in the case of a letter where the country of origin and the country of destination are different, on the tenth Business Day after posting the letter by pre-paid mail; (iv) in the case of a facsimile, at the time of successful transmission; and (v) in the case of an email, at the time it is sent. However, despite the foregoing, if receipt is after 5pm on a Business Day or any time on a non-Business Day, then it is deemed to have been received at 9am on the next Business Day.

20. Security Interest in the Goods & Services

- (a) The Buyer acknowledges that the Seller's interest in the Goods and/or Services provided for by the transaction contemplated by the Contract is a Security Interest, and secures the payment of all money and the performance of all obligations owing or assumed by the Buyer under the Contract.
- (b) The Security Interest: (i) extends to all proceeds of the Goods and/or Services; and (ii) is effective and attaches to the Goods and/or Services immediately after the Buyer acquires any right or interest in the Goods and/or Services if the Buyer has not acquired the Goods and/or Services when the Buyer signs or otherwise adopts or accepts the Contract.
- (c) The Seller may, at the Buyer's cost, take all steps as the Seller considers advisable to register, amend or remove the registration of, protect, perfect or record its Security Interest in the Goods and/or Services or to better secure its position in respect of the Contract under the PPS Law. The Seller reserves the right in the event of non-payment of any amounts due by the Buyer under the relevant Contract to retrieve the Goods and/or Services from the Buyer including by entering any premises where the Goods and/or Services are located and the Buyer agrees the Seller shall not be liable for trespass or for any damage caused in removing the Goods and/or Services from the premises.
- (d) In respect of the PPS Law, the Contract and all quotations and invoices issued to the Buyer applicable to the Contract constitute a "security agreement" for the purposes of the PPS Law.
- (e) For the purposes of s115 of the PPS Law, the parties agree that to the fullest extent permitted by law, they have agreed to: (i) contract out of ss95, 117, 118, 120, 121(4), 125, 128, 129, 130, 132(3)(d), 132(4), 134, 135, 142 and 143 of the PPS Law; and (ii) contract out of all matters permitted to be contracted out of pursuant to s115(7) of the PPS Law.
- (f) To the fullest extent permitted by law, the Buyer hereby waives its rights to receive any notice under s157 of the PPS Law pursuant to s157(3)(b) of the PPS Law.
- (g) In this clause: **PPS Law** means the *Personal Property Securities Act 2009 (Cth)* and the regulations thereunder and any amendment made to any other legislation as a consequence of that legislation including, without limitation, amendments to the *Corporations Act 2001 (Cth)*; **Security Interest** has the same meaning as that term as in the PPS Law.