

TERMS AND CONDITIONS

These terms and conditions are between **Scientific Devices Australia Pty Ltd (ACN 665 178 067)**, (**we, us or our**) and you, the person or entity stated in the Quote (**you or your**), together the **Parties** and each a **Party**. These terms and conditions, together with any credit application or quotation to which these Terms are attached, form the entire agreement under which we will provide the Goods to you (**Terms**).

1. Acceptance

1.1 You have requested the Goods and you are taken to accept these Terms by the earlier of:

- (a) signing and returning any credit application or Quote issued by us in which these Terms were attached or referred to;
- (b) issuing a purchase order or similar request for the Goods in response to the Quote referred to in clause 1.1(a);
- (c) instructing us to proceed with the Goods; or
- (d) making part of full payment of the Price (including any deposit),

(**Acceptance**).

1.2 All variations to the Goods must be agreed in writing between the Parties and will be priced in accordance with any schedule of rates provided by us, or otherwise as reasonably agreed between the Parties. If we consider that any instructions or directions from you constitutes a variation to the scope of the Goods or our obligations under these Terms, then we will not be obliged to comply with such instructions or directions unless agreed in accordance with this clause.

1.3 Notwithstanding clause 1.2, you agree that we may vary the Goods or the Price at any time, by providing 30 days' written notice to you (**Variation Notice Period**). If you do not agree to any amendment made to the Goods or Price, you may, before the end of the Variation Notice Period, terminate this Agreement by giving us 30 days' notice in writing, in which case, the proposed variation will not come into effect and clause 13.2 will apply.

2. Quote

2.1 You may request us to supply the Goods and/or Support Services by notifying us in writing, through our website or by any other process we specify (**Order Request**).

2.2 If we accept the Order Request, we will provide you with a formal Quote, and once the Quote is agreed between both Parties in writing (including with your Acceptance) it will be binding in accordance with these Terms and the Quote.

2.3 Each Quote is subject to, and will be governed by, these Terms and any other conditions expressly set out in the Quote. To the extent of any ambiguity or discrepancy between a Quote and these Terms, these Terms will prevail.

3. Goods

3.1 In consideration of your payment of the Price, we will supply the Goods to you as set out in the Quote and in accordance with these Terms, whether ourselves or through our Personnel.

Hardware and Software

3.2 You understand and agree that we only supply the Goods and, where your Goods are supplied with third party software, you (and your Personnel) may be required to comply with any terms and conditions arising in connection with your use of the software.

Demo Goods

3.3 Where we loan the Goods to you at no charge for demonstration and testing purposes (**Demo Goods**) you agree (and will ensure your Personnel agree) to:

- (a) not allow anyone to interfere or otherwise tamper with such Goods;
- (b) not allow any third party to conduct repairs or other maintenance on such Goods;
- (c) pay us the cost of such Goods (as a debt due and immediately payable) where their loss, theft, damage or destruction occurs;
- (d) protect and maintain such Goods in good order and condition; and
- (e) return such Goods in their original condition (reasonable wear and tear accepted) to us:
 - (i) at any time during the Term upon our request;
 - (ii) within 7 days of the termination of these Terms; or
 - (iii) at the end of the relevant Goods testing period (**Goods Testing Period**).

3.4 You understand that Demo Goods are pre-used and therefore offered "as is", in which case there may be signs of wear on the Goods. You acknowledge and agree that signs of wear or tear on Demo Goods will not be considered as a defect.

3.5 To the maximum extent permitted by law and subject to your Consumer Law Rights, we exclude all express or implied warranties for Demo Goods. You acknowledge and agree that Demo Goods are supplied "as is", without any warranties as to the condition, performance or suitability of the Demo Goods, including that no warranty of the merchantability or fitness for particular purposes apply to the Demo Goods. You will conduct your own investigations to ensure that the Demo Goods meet requirements.

3.6 If the Quote expresses a time within which the Goods are to be supplied, we will use reasonable endeavours to provide the Goods by such time, or where no date is specified, then within a reasonable period of time but you agree that such time is an estimate only.

Custom Goods

3.7 Where you have requested Goods which are engineered, custom made or made to order (**Custom Goods**), you acknowledge and agree that, to the maximum extent permitted by law and subject to your Consumer Law Rights, these Custom Goods are non-refundable and non-returnable.

3.8 You agree to pay to us any additional costs involved in the development, design and production of the Custom Goods (**Development Costs**), as set out in a separate Quote. You

agree you will pay to us the Development Costs for the Custom Goods if the Quote for the Custom Goods is cancelled after development works have commenced.

Additional Services

- 3.9 If you require additional services, including configuration testing, repair, warranty claim assistance or extended warranties for your Goods, we may, in our sole discretion, provide such additional services to be set out and priced in a separate Quote provided by us. You may request additional services through an Order Request.
- 3.10 If the Quote expresses a time within which the additional services are to be supplied, we will use reasonable endeavours to provide the Goods by such time, or where no date is specified, then within a reasonable period of time but you agree that such time is an estimate only.

4. Delivery, Title and Risk

- 4.1 Title in the Goods will only pass to you on the date that you pay the Price in full in accordance with these Terms.
- 4.2 If we are responsible for delivering the Goods to you, we will use reasonable endeavours to deliver the Goods by the time agreed between the Parties, and risk in the Goods will pass to you once we have delivered the Goods to the agreed delivery location. You will be responsible for the costs of delivery.
- 4.3 If you are responsible for collecting the Goods from us, you must collect the Goods by the time agreed between the Parties, and risk in the Goods will pass to you once you have collected the Goods from the agreed collection location. You will be responsible for the costs of collection.
- 4.4 Where Goods are supplied to you without payment in full, you:
 - (a) are a bailee of the Goods until title in them passes to you;
 - (b) irrevocably appoint us to be your attorney to do all acts and things necessary to ensure our retention of title to the Goods, including the registration of any security interest in our favour with respect to the Goods; and
 - (c) must not allow any other person to have or acquire any security interest in the Goods without our prior written consent.

5. Support Services

- 5.1 If requested by you and accepted by us, we agree to provide Support Services relevant to the Goods you purchase, including the installation of the Goods. In consideration of your payment for the Support Services as set out in each Quote, we will supply you with the Support Services in accordance with your Support Request.
- 5.2 In order for you to receive Support Services, you must place a request through the support services contact details we provide to you (**Support Request**).
- 5.3 Where we have agreed as part of the Support Request to provide Support Services on Your Premises, we will send one or more of our Personnel to Your Premises on the agreed days and during the agreed hours.
- 5.4 Where we provide our Support Services, you agree that you will:

- (a) if applicable, provide us and our Personnel with sufficient access, free from harm or risk to health or safety, to Your Premises (including any facilities at the Your Premises) to enable us to supply the Services and install the Goods, including at the dates and times that we may reasonably request; and
- (b) be responsible for obtaining, and providing to us if necessary, any access, consents, licences, approvals and permissions from other parties necessary for the installation of the Goods to be provided at your own cost.

5.5 Where you choose not to utilise our Support Services to install the Goods, you acknowledge and agree:

- (a) you will be solely responsible for arranging and bearing the costs of installing the Goods in accordance with any manufacturer specifications, instructions or safety requirements; and
- (b) we will not be liable for any issues, damage or losses arising from your improper installation of the Goods.

5.6 Subject to your Consumer Law Rights, any warranty provided by us for the Goods will be void if the Goods are not installed in accordance with any manufacturer specifications, instructions or safety requirements.

6. Price and Payment

- 6.1 You agree to pay us the Price and any other amounts due under this Agreement and the Quote in accordance with the Payment Terms provided on the Quote.
- 6.2 If any payment has not been made in accordance with the Payment Terms provided on the Quote, we may (at our absolute discretion, and without prejudice to any of our rights or remedies under these Terms or at Law):
 - (a) after a period of 5 Business Days from the relevant due date, cease supplying the Goods, and recover, as a debt due and immediately payable from you, our reasonable additional costs of doing so (including all recovery costs);
 - (b) charge interest at a rate equal to the Reserve Bank of Australia’s cash rate, from time to time, plus 2% per annum, calculated daily and compounding monthly, on any such amounts unpaid after the relevant due date in accordance with the Payment Terms; and/or
 - (c) enter any premises where the unpaid Goods are stored or held, for the purpose of retrieving and taking possession of those Goods, and you agree to provide any access, items and consents required to enable us to do so.
- 6.3 When applicable, GST payable will be clearly shown on our invoices. You agree to pay us an amount equivalent to the GST imposed on these charges. “GST” has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 6.4 Unless otherwise stated by us in writing, the Price is exclusive of any tax imposed by any government, state or local authority on the value of goods and services, and includes goods and services tax, sales tax, use tax, indirect tax, value added tax, excise tax, customs tax, tariffs and duties (**Sales Tax**), which will be your responsibility to pay.

If we are required to pay any Sales Tax in relation to the Goods supplied under these Terms, the applicable Sales Tax will be set out in the invoice provided to you and the Price payable by you under these Terms must be increased by the applicable Sales Tax. This clause 6.4 does not apply to any taxes imposed on our net income.

7. Security Interest

7.1 You acknowledge and agree that:

- (a) these Terms are a 'security agreement' under the *Personal Property Securities Act 2009* (Cth) (**PPSA**);
- (b) this clause 7 creates a security interest in the Goods and any proceeds from any sale or disposal of the Goods, and we are a secured party in relation to the Goods and any such proceeds;
- (c) we are entitled to register our interest on the relevant register as (at our discretion) a security interest, and if applicable, a 'purchase money security interest'; and
- (d) you must (at your cost), where we request, take all steps that we consider necessary or desirable to assist us to register our security interest, to ensure our security interest in the Goods and the proceeds is enforceable, and to perfect, or better secure our position under these Terms, or ensure our priority over all other security interests

7.2 Until such time as title in the Goods has passed to you as contemplated under clause 4.1, you must not allow any other person to have or acquire any security interest in the Goods, unless with our prior written consent.

7.3 To the extent the Law permits, you waive your right to receive any notice (including notice of a verification statement) that is required by the PPSA, including but not limited to notices under sections 95, 118, 121, 130, 132, 135 or 157. However, this does not prevent us from giving a notice under the PPSA.

7.4 You must not disclose any information of the kind referred to in section 275 of the PPSA, to the extent permitted under that section.

7.5 Nothing in this clause 7 is intended as an agreement to subordinate a security interest arising under these Terms and conditions in favour of any person under section 61 of the PPSA.

7.6 In this clause 7, a 'security interest' includes any form or lien, encumbrance or a security interest under the PPSA.

7.7 Terms used in this clause 7 but not defined have the same meanings as in the PPSA.

7.8 This clause 7 will survive the termination or expiry of these Terms.

8. Warranties and Representations

8.1 Each Party represents and warrants that:

- (a) it has full legal capacity, right, authority and power to enter into this Agreement, to perform its obligations under this Agreement, and to carry on its business; and
- (b) this Agreement constitutes a legal, valid and binding agreement, enforceable in accordance with its terms.

8.2 You represent and warrant that:

- (a) all information and documentation that you provide to us in connection with this Agreement is true, correct and complete;
- (b) no insolvency events (including but not limited to bankruptcy, receivership, voluntary administration, liquidation or creditors' schemes of arrangement) affecting you or your property are occurring or are likely to occur; and
- (c) if you enter into this Agreement as a trustee of a trust, then:
 - (1) you are the sole trustee of the relevant trust and have been validly appointed;
 - (2) you have full and valid power, authority, consents and approvals under the relevant trust to execute the Agreement and carry out the transactions contemplated by the Agreement; and
 - (3) you have the right to be indemnified out of the assets of the relevant trust for all liabilities incurred by you under the Agreement.

9. Confidential Information

9.1 Subject to clause 9.2, each Party must (and must ensure that its Personnel) keep confidential, and not use (except to perform its obligations under these Terms) or permit any unauthorised use of, information provided by the other Party, including information about these Terms and the other Party's business and operations.

9.2 Clause 9.1 does not apply where the disclosure is required by Law or the disclosure is to a professional adviser in order to obtain advice in relation to matters arising in connection with these Terms and provided that the disclosing Party ensures the adviser complies with the terms of clause 9.1.

9.3 This clause 9 will survive the termination of these Terms.

10. Australian Consumer Law

10.1 Certain legislation, including the Australian Consumer Law, and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the supply of the Goods by us to you which cannot be excluded, restricted or modified (**Consumer Law Rights**). To the extent that you maintain Consumer Law Rights at Law, nothing in these Terms excludes those Consumer Law Rights.

10.2 Subject to your Consumer Law Rights, we provide all material, work and goods (including the Goods) to you without conditions or warranties of any kind, implied or otherwise (including without limitation any implied warranties of merchantability or fitness for a particular purpose), whether in statute, at Law or on any other basis, except where expressly set out in these Terms.

10.3 This clause 10 will survive the termination or expiry of these Terms.

11. Warranty

11.1 Our goods come with guarantees that cannot be excluded under the Australian Consumer Law.

- 11.2 You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage.
- 11.3 You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 11.4 The Manufacturer may provide an additional warranty, including an extended warranty, to you in addition to any rights or remedies you have under the Australian Consumer Law or any other Consumer Law Rights. Where this is the case, you understand that the terms of the warranty are between you and the manufacturer. This clause does not intend to limit your Consumer Law Rights.

12. Liability

- 12.1 Despite anything to the contrary but subject to your Consumer Law Rights, to the maximum extent permitted by Law:
- (a) neither Party will be liable for Consequential Loss;
- (b) a Party's liability for any Liability under these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (or any of its Personnel), including any failure by that other Party to mitigate its loss; and
- (c) (where our Goods are not ordinarily acquired for personal, domestic or household use or consumption) in respect of any failure by us to comply with relevant Consumer Law Rights, our Liability is limited (at our discretion) to:
- (1) replacing the Goods or the supply of equivalent Goods, or the payment of the cost of replacing the Goods or of supplying equivalent Goods; or
 - (2) the repair of the Goods, or the payment of the cost of having the Goods repaired;

- 12.2 This clause 11 will survive the termination or expiry of these Terms.

13. Term and Termination

- 13.1 These Terms shall continue upon your Acceptance of the Quote and will continue until the date on which we have completed the supply of the Goods to you (as reasonably determined by us) (**Term**).
- 13.2 These Terms will terminate immediately upon written notice by a Party (**Non-Defaulting Party**) if:
- (a) the other Party (**Defaulting Party**) breaches a material term of these Terms and that breach has not been remedied within 10 Business Days of the Defaulting Party being notified of the breach by the Non-Defaulting Party; or
- (b) the Defaulting Party goes bankrupt, insolvent or is otherwise unable to pay its debts as they fall due.
- 13.3 Upon expiry or termination of these Terms:
- (a) we will immediately cease providing the Goods;
- (b) without limiting and subject to your Consumer Law Rights, any payments made by you to us for Goods already supplied are not refundable to you;
- (c) you are to pay for all Goods supplied prior to termination, including Goods which have been supplied and have not yet been invoiced to you,

and all other amounts due and payable under these Terms;

- (d) you agree to grant us such rights of access to any premises where the Goods are located to allow us (or our Personnel) to recover or repossess any Goods which we retain title to;
- (e) by us pursuant to clause 13.2, you also agree to pay us our additional costs, reasonably incurred, and which arise directly from such termination (including recovery fees);
- (f) we may retain your documents and information (including copies) to the extent required by Law or pursuant to any information technology back-up procedure, provided that we handle your information in accordance with clause 9; and
- (g) you agree to promptly return (where possible), or delete or destroy (where not possible to return), any documentation, information or material provided to you by us that is in your possession or control.

- 13.4 Termination of these Terms will not affect any rights or liabilities that a Party has accrued under it.

- 13.5 This clause 13 will survive the termination or expiry of these Terms.

14. General

- 14.1 **Amendment:** These Terms may only be amended by written instrument executed by the Parties.
- 14.2 **Assignment:** Subject to clauses 14.3 and 14.11, a Party must not assign, novate or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent is not to be unreasonably withheld).
- 14.3 **Assignment of Debt:** You agree that we may assign or transfer any debt owed by you to us, arising under or in connection with these Terms, to a debt collector, debt collection agency, or other third party.
- 14.4 **Disputes:** A Party may not commence court proceedings relating to any dispute arising from, or in connection with, these Terms (**Dispute**) without first meeting a representative of the other Party within 10 Business Days of notifying that other Party of the Dispute. If the Parties cannot resolve the Dispute at that meeting, either Party may refer the Dispute to mediation administered by the Australian Disputes Centre.
- 14.5 **Force Majeure:** Neither Party will be liable for any delay or failure to perform their respective obligations under these Terms if such delay or failure is caused or contributed to by a Force Majeure Event, provided that the Party seeking to rely on the benefit of this clause:
- (a) as soon as reasonably practical, notifies the other Party in writing details of the Force Majeure Event, and the extent to which it is unable to perform its obligations; and
- (b) uses reasonable endeavours to minimise the duration and adverse consequences of the Force Majeure Event.

Where the Force Majeure Event prevents a Party from performing a material obligation under these Terms for a period in excess of 60 days, then the other Party may by notice terminate these Terms, which will be effective

immediately, unless otherwise stated in the notice. This clause will not apply to a Party's obligation to pay any amount that is due and payable to the other Party under these Terms.

- 14.6 **Governing Law:** These Terms are governed by the laws of Victoria. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Victoria and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts. The Parties agree that the U.N. Convention on Contracts for the Sale of International Goods is excluded from application to these Terms.
- 14.7 **Intellectual Property:** Nothing in these Terms constitute a transfer or assignment of one Party's Intellectual Property Rights to the other Party.
- 14.8 **Notices:** Any notice given under these Terms must be in writing addressed to the addresses set out in these Terms, or the relevant address last notified by the recipient to the Parties in accordance with this clause. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 14.9 **Publicity:** Despite clause 9, you agree that we may advertise or publicise the broad nature of our supply of the Goods to you, including on our website or in our promotional material.
- 14.10 **Relationship of Parties:** These Terms are not intended to create a partnership, joint venture, employment or agency relationship between the Parties.
- 14.11 **Subcontracting:** We may subcontract the supply of any part of the Goods without your prior written consent. We agree that any subcontracting does not discharge us from any liability under these Terms and that we are liable for the acts and omissions of our subcontractor.

15. Definitions

In these Terms, unless the context otherwise requires, capitalised terms have the meanings given to them in the Quote, and:

ACL or Australian Consumer Law means the Australian consumer laws set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as amended, from time to time.

Business Day means a day on which banks are open for general banking business in Melbourne, Victoria, excluding Saturdays, Sundays and public holidays.

Consequential Loss includes any consequential loss, special or indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise. However, your obligation to pay us the Price will not constitute "Consequential Loss".

Consumer Law Rights has the meaning given in clause 10.1.

Goods means the goods to be supplied as set out in the Quote, as adjusted in accordance with these Terms.

Force Majeure Event means any event or circumstance which is beyond a Party's reasonable control including but not limited to, acts of God including fire, hurricane, typhoon, earthquake, landslide, tsunami, mudslide or other catastrophic natural disaster, civil riot, civil rebellion, revolution, terrorism, insurrection, militarily usurped power, act of sabotage, act of a public enemy, war (whether declared or not) or other like hostilities, ionising radiation, contamination by radioactivity, nuclear, chemical or biological contamination, any widespread illness, quarantine or government sanctioned ordinance or shutdown, pandemic (including COVID-19 and any variations or mutations to this disease or illness) or epidemic.

Intellectual Property Rights or Intellectual Property means any and all existing and future rights throughout the world conferred by statute, common law, equity or any corresponding law in relation to any copyright, designs, patents or trade marks, domain names, know-how, inventions, processes, trade secrets or confidential information, circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing, whether or not registered or registrable.

Law means all applicable laws, regulations, codes, guidelines, policies, protocols, consents, approvals, permits and licences, and any requirements or directions given by any government or similar authority with the power to bind or impose obligations on the relevant Party in connection with these Terms or the supply of the Goods.

Liability means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to these Terms or otherwise.

Manufacturer means the partner or supplier whose products are sold through us.

Personnel means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents, but in respect of you, does not include us.

Price means the price set out in the Quote for the provision of the Goods, including any Additional Services, as adjusted in accordance with these Terms, and includes any deposit set out in the Quote.

Quote means a statement of the Price for the Goods and any additional charges for delivery of the Goods as provided by us to you.

Your Premises means the delivery address provided by you.