

## Terms and Conditions

### 1. Documents constituting agreement

- (a) The contract between Scientific Technical Services (Australia) Pty Ltd ACN 069 774 992 (**STS**) and the customer (**Customer**) relating to any of STS's products (**Products**), installation, maintenance, consultancy or similar such services (**Services**) or transactions are subject to these terms and conditions (**Terms**) and the document to which these Terms are attached (together the **Contract**).
- (b) Unless the Contract provides otherwise, the terms of "Incoterms 2000" (published by the International Chamber of Commerce) apply to the Contract.
- (c) **PPSA** means the Personal Property Securities Act 2009 (Cth), as amended from time to time.

### 2. Delivery of Products

- (a) The terms of delivery of the Products or provision of the Services are as stated in the Contract.
- (b) The term "carriage paid to (destination)" defined in "Incoterms 2000" shall mean for the purposes of the Contract that the Customer shall bear all risks and any other costs occurring after STS has made the Products available for unloading at the destination specified in the Contract and the Customer must pay the cost of unloading the Products.
- (c) The Customer must advise STS of its requirements for the packing and marking of the Products and any other arrangements for the delivery of the Products well in advance of the shipment of the Products. If STS incurs additional packing, shipping, transportation or other expenses as a result of a Customer's request for the use of a particular method or route of transportation or agency, those expenses shall be invoiced to the Customer and must be paid by the Customer.
- (d) If, within a reasonable period of time prior to the shipment of the Products, the Customer does not provide to STS all necessary instructions for the packing, marking and other relevant arrangements with respect to the delivery of the Products, these matters shall be determined by STS at its discretion.
- (e) STS will not be liable for delay, failure or inability to deliver the Products.
- (f) Except as expressly provided in these Terms, STS shall not be under any obligation to accept the return of any Products supplied to the Customer.

### 3. Price

- (a) Unless otherwise designated in the Contract, the price of Products shall be on a "EXW" (ex works) basis.
- (b) If the price of Products at any time will be other than EXW any associated costs incurred by STS which arise as a result of STS insuring or transporting the Products from the point where the risk of loss passes to the Customer shall be invoiced to and paid by the Customer.
- (c) STS's price lists, invoices and statements exclude GST and government taxes unless expressly noted thereon.
- (d) STS may vary any of the prices set out in its price list without notice to Customers.
- (e) The Customer will provide its tax file number, ABN and any information required for any GST or equivalent prior to any dealings.

### 4. Services

- (a) The price of the Services is as stated in the Contract or as communicated to the Customer.
- (b) With respect to any Services that STS provides to the Customer in connection with the Products or otherwise, STS shall not be liable for any injury, loss or damage incurred, whether direct, consequential, incidental, punitive, exemplary or indirect, by statute, in tort or contract.
- (c) STS will not be liable for delay, failure or inability to deliver the Services.

### 5. STS warranties

- (a) Subject to any applicable law, STS warrants that the Products to be supplied under the Contract will conform to the description on the face of the Contract, will be of merchantable quality and that good title to the Products will be transferred. STS does not provide any warranty as to the merchantability or fitness for the Products for any particular purpose if the Products are made in compliance with the Customer's design or specifications.
- (b) Subject to clause 5(a), to the full extent permitted by law and except as otherwise provided therein, all warranties, conditions, rights and remedies, express or implied, statutory or otherwise, are hereby expressly excluded (except to the extent such liability is legally incapable of being excluded or limited), including (but not limited to) liability in respect of any:
- damage to the Products caused after risk passes;
  - injury, loss or damage arising out of any representation, statement, recommendation or advice given by STS, its employees or agents before or after the issue of the Contract by STS; or
  - indirect or consequential injury, loss or damage suffered by reason of defects in the Products or arising from any breach of warranty or condition or any misrepresentation.
- (c) STS's liability, if any, in respect of any breach of any conditions or warranties or under or pursuant to such rights or remedies referred to in clause 5(b) above shall be limited to:
- the replacement of the Products or the supply of equivalent Products or Services;
  - the repair of the Products;

- the payment of the cost of replacing the Products or of acquiring equivalent Products or Services;
- the payment if the cost of having the Products repaired;
- supplying the Services again; or
- payment of the cost of having the Services supplied again.

- (d) Any Products claimed by the Customer to be defective must be returned at the cost of the Customer to STS by the Customer and the Products must be returned at the risk of the Customer and in accordance with STS's instructions.
- (e) All claims made by the Customer with respect to defective Products must be made within 90 days of the Customer first having had a reasonable opportunity to discover the defect in the Products.

### 6. Customer representations and warranties

The Customer represents and warrants that:

- it has full power and authority to enter into and perform its obligations under these Terms;
- all information provided to STS by or on behalf of the Customer is true and correct in all material respects and is not, whether by omission of information or otherwise, misleading; and
- it has not withheld from STS any document, information or other fact material to the decision of STS to enter into a contract with the Customer.

The representations and warranties given in this clause 6 survive the Contract.

### 7. Payment

- (a) Invoices submitted by STS are payable only in Australian dollars.
- (b) Payment terms for all credit accounts are as advised to the Customer at the time the credit account is opened, being either:
- for Product sales - "Net 30 days" (meaning STS must receive payment in full on or before the last working day of the month following the date of supply); or
  - for the provision of Services - "14 days from the date of the invoice" (meaning STS must receive payment in full within 14 days of the invoice).
- (c) Unless prior arrangements for credit have been made, payment for Products and/or Services is due in full before delivery of such Products and/or Services.
- (d) No payment due from or payable by the Customer shall be set-off or withheld on account of any claim asserted by the Customer.
- (e) At its discretion, STS may require a deposit to be paid on certain sales of Products or the supply of Services. Any such requirement, including as to the timing of the deposit, will be notified to the Customer.
- (f) STS may require the Customer to provide security for payment in a form acceptable to STS prior to the supply of Products or Services.
- (g) The Customer is not entitled to withhold any payment by way of retention unless the terms and conditions of the retention are agreed in writing by STS.
- (h) If the Customer fails to pay any amount to STS when it is due STS (in addition to any other rights it may have) shall be entitled to do all or any of the following:
- suspend further deliveries in respect of any order;
  - terminate the Contract or any other part of the same without liability; or
  - deduct any moneys due which may become due to the Customer from any moneys due or recoverable from the Customer in respect of any bona fide claim howsoever arising.

### 8. Interest

Interest on overdue accounts will be charged at the rate specified by STS from time to time or (if no rate is specified) 2% above the rate charged from time to time by STS's bank on overdraft accounts of \$100,000 or more.

### 9. Retention of title of Products

- The Customer agrees that legal and equitable title to the Products is retained by STS and does not pass until STS has received payment in full for the Products and all other moneys owed by the Customer to STS.
- If the Customer fails to pay the moneys owed to STS, the Customer acknowledges and agrees that STS may recover or retake possession of all or any of the Products and dispose of such Products.
- The Customer grants STS and any person authorised by STS full leave, permission, irrevocable licence to enter without notice and at any time any property where any Product is placed or stored and do all things necessary and use such force as is necessary in order to recover or retake possession of the Products.
- The Customer accepts liability for the safe custody and return of the Products to STS and indemnifies STS for any costs and/or loss relating thereto.
- The Customer agrees that a certificate purporting to be signed by an officer of STS identifying Products as unpaid for shall be conclusive evidence that the Products have not been paid for and of STS's title thereto.
- Until payment in full the Customer agrees:
  - to provide adequate insurance for the Products; and
  - only to sell the Products in the ordinary course of its business.
- The Customer acknowledges and agrees, for the purposes of clause 9(f)(ii):

- (i) a sale of any Product for less than its cost price, is not a sale in the "ordinary course of business"; and
- (ii) it will sell any such Products as fiduciary agent and bailee of STS.

#### 10. Credit limit

If STS grants any credit facility or nominates any credit limit, this is an indication only of its intention at the time. STS can vary or withdraw any credit facility at any time at its discretion and without any liability to the Customer or any other party. Credit facilities granted, if any, are not transferable without the consent in writing of STS.

#### 11. Title and risk

- (a) Subject to these Terms, title and risk in the Products will pass from STS to the Customer (or its nominated agent) when STS receives payment in full for such Products, unless otherwise agreed in writing by STS.
- (b) Risk in products delivered on an EXW basis will pass on delivery to the Customer at STS's premises or other named place.
- (c) If STS is exporting the Products to the Customer on "FOB", "CIF" or "CFR" terms, title and risk in the Products will pass from STS to the Customer upon the passing of the Products across the ship's rail.

#### 12. Indemnity

The Customer indemnifies STS against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which STS pays, suffers, incurs or is liable for in connection with the use of the Products (or the sale of products made from the Products) or Services, other than to the extent the same arises from the negligence or wilful default of STS or any employee, agent or officer of STS and this indemnity is a continuing obligation of the Customer and remains in full force and effect until all money owing, contingently or otherwise, under this indemnity has been paid in full.

#### 13. Technical advice

With respect to any technical advice it provides to the Customer in connection with the Products or Services, STS shall not be liable for any injury, loss or damage incurred, whether direct, consequential, incidental, punitive, exemplary or indirect, by statute, in tort or contract, under any indemnity provision or otherwise.

#### 14. Force majeure

STS shall not be liable for any prevention of or delay in performance of its obligations under the Contract which is caused by any event or circumstance which is beyond the reasonable control of STS including any act of God, strike, lockout or other labour dispute, war, riot or civil commotion, accidental breakdown to any machinery or facilities necessary for the transportation or delivery of the Products to the delivery point.

#### 15. Non-acceptance

- (a) If the Customer repudiates any contract or wrongfully refuses to accept Products delivered under the Contract (and such Products have been specially produced to the Customer's particular requirements), then the damages payable by the Customer to STS in those circumstances shall unless otherwise determined be the full sale price of the Products plus any additional costs incurred by STS less the current scrap or release value (if any) of the Products as determined by STS.
- (b) Where the Contract is to be fulfilled by delivery in a number of instalments, the failure by STS to deliver any particular instalment shall not entitle the Customer to repudiate the Contract or refuse to accept further instalments.

#### 16. Termination

- (a) It is a Termination Event if:
  - (i) the Customer breaches the Contract in a material respect and, in STS's opinion, the breach cannot be remedied (or, if the breach can be remedied in STS's opinion, the Customer does not remedy the breach within 14 days after STS gives the Customer notice of the breach);
  - (ii) a judgment in an amount exceeding \$200,000 or its equivalent in any other currency is obtained against the Customer, or any distress, attachment, execution or other process of a government agency in an amount exceeding \$200,000 or its equivalent in any other currency is issued against, levied or enforced on any of the Customer's assets, and is not set aside or satisfied within 14 days;
  - (iii) the Customer suspends payment of its debts generally or it becomes unable to pay its debts when due;
  - (iv) an application or order is made for the winding up or dissolution of the Customer, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of the Customer;
  - (v) the Customer enters into, or resolves to enter into, any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
  - (vi) the Customer ceases, or threatens to cease, to carry on business; or
  - (vii) a receiver, receiver and manager, administrator, trustee or similar official is appointed over any of the Customer's assets or undertakings.
- (b) If a Termination Event occurs, STS may (without affecting the accrued rights and obligations of the parties as at the date of termination) do all or any of the following:
  - (i) terminate the Contract immediately by notice to the Customer;
  - (ii) suspend further deliveries of Products or Services under the Contract; or
  - (iii) deduct from any moneys due or which may become due to the Customer from any amount due or recoverable from the Customer under the provisions of the Contract.
- (c) The Customer may not terminate the Contract without the written consent of STS, and if STS consents to such a termination, reasonable termination charges computed by STS shall be assessed in connection with such termination and upon such termination STS shall be regarded as discharged from any further obligations

under the Contract and any other contract which the Customer may place or have placed with STS.

#### 17. Assignment

- (a) The Customer must not assign or otherwise dispose of all or any of its rights in, to and under the Contract without the prior written consent of STS.
- (b) STS may assign all or any of its rights in, to and under the Contract to any parent or affiliate of STS.

#### 18. General

- (a) These Terms are governed by the law of Western Australia. The Customer and STS submit to the non-exclusive jurisdiction of the courts of Western Australia.
- (b) Waiver of any right, power, authority, discretion or remedy arising upon a breach of or default under this agreement must be in writing and signed by the party granting the waiver.
- (c) The parties agree and acknowledge that nothing in these Terms and conditions shall constitute an agency, employment or partnership relationship between them or any of their respective employees, contractors, servants or agents, unless an agreement in writing provides otherwise.
- (d) If any term or part of these Terms and conditions is found to be illegal or unenforceable, that part or term shall be deemed not to be part of these Terms and conditions and the remainder of these conditions shall continue in full force and effect.
- (e) Each party must treat the existence and terms of the Contract as confidential and will procure that its advertising agents, other agents, contractors and representatives (**Agents**) treat as confidential unless disclosure is required by law (other than any requirement to disclose under the PPSA to the extent that the PPSA is or may be applicable under these Terms. No announcement or communication relating to the negotiations of the parties or the existence, subject matter or terms of the Contract may be made or authorised by a party unless the other party has first given its written approval.
- (f) No terms and conditions sought to be imposed by the Customer upon STS shall apply unless otherwise agreed to in writing by STS.

#### 19. Privacy

STS is committed to ensuring that personal information is professionally managed in accordance with the Privacy Act 1988 (Cth) and all relevant State legislation. A copy of STS's privacy policy is available on request or from [www.stshealth.com.au](http://www.stshealth.com.au).

#### 20. Personal Property Securities Act 2009

- (a) The Customer acknowledges and agrees that, by accepting these Terms, the Customer grants STS a security interest over the Products and their proceeds (by virtue of the retention of title in clause 9 above).
- (b) The Customer undertakes:
  - (i) to provide to STS on request all information reasonably required by STS to register a financing statement or financing change statement on the Personal Property Securities Register; and
  - (ii) to advise STS in writing of any proposed change to its name or address at least 7 days before the changes takes effect.
- (c) The Customer:
  - (i) waives its right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest;
  - (ii) waives its rights and, with STS's agreement, contracts out of Customers rights under paragraphs (a), and (l) to (q) inclusive of section 115(1) of the PPSA; and
  - (iii) agrees that where STS has rights in addition to those in chapter 4 of the PPSA, those rights will continue to apply and, in particular, will not be limited by section 123 of the PPSA.
- (d) The Customer must pay the costs, charges and expenses of and incidental to the need for or desirability of registration of a financing statement or financing change statement or any action taken by STS to comply with the PPSA (including complying with a demand given under section 178 of the PPSA) or to protect its position under the PPSA. The Customer must pay any costs incurred by STS, including all reasonable legal costs arising from any disputes or negotiations with third parties claiming an interest in any Products supplied to the Customer.
- (e) Unless the context requires otherwise, the terms and expressions used in this clause 20 have the meanings given to them in, or by virtue of, the PPSA.

#### 21. Interpretation

In these Terms headings and bold type are for convenience only and do not affect the interpretation of these Terms and, unless the context otherwise requires:

- (a) words importing the singular include the plural and the converse;
- (b) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) an expression importing a natural person includes an individual, a firm, a body corporate, an unincorporated association and any government agency;
- (d) a reference to legislation or to a provision of legislation includes any modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (e) a reference to a party to a document includes that party's successors and permitted assigns; and
- (f) the meaning of terms is not limited by specific examples introduced by expressions "including" or "for example", or similar expressions.