

TERMS AND CONDITIONS

1. TERMS AND CONDITION TO APPLY

Dywidag Systems International Pty Ltd (ABN: 84093424349) (“**Seller**”), and the Buyer agree that these terms and conditions (“**Sales Conditions**”) shall apply to the supply of all goods sold and services provided by the Seller to the Buyer (“**Goods**”) and will supercede any prior agreements, offers, dealings or trade usage, or any terms communicated by the Buyer to the Seller. These Sales Conditions will only be varied by writing and signed by an authorised representative of the Buyer and the Seller.

2. QUOTATIONS/ORDERS

If the Seller has provided a quotation or tender for Goods (“**Quotation**”), the Quotation is valid for acceptance by the Buyer within 30 days. If the Buyer has made an order for Goods (“**Order**”) the Order is subject to acceptance in writing by the Seller.

3. PRICE

(a) If the Seller has provided a Quotation for Goods or the Seller has accepted an Order, the price actually payable for the Goods is the Seller’s current prices as at the date of the Buyer’s acceptance of the Quotation and the Seller’s acceptance of the Order, respectively.

4. CHARGES AND TAXES

Unless otherwise expressly stated, the price of the Goods excludes all charges in relation to transportation, packing, crating, insurance, storage, demurrage, delivery and all taxes and duties.

5. VARIATION OR CANCELLATION

On acceptance by the Buyer of the Quotation or the Seller of the Order:

- (a) no change in the specifications of the Goods will bind the Seller, unless agreed to, in writing, by the Seller; and
- (b) if the Buyer cancels an Order it will pay the Seller any and all damage and expense incurred by the Seller in relation to the Goods.

6. PAYMENT

- (a) Unless otherwise expressly stated, the Buyer shall pay for the Goods not later than the end of the month, following the month in which the Goods are delivered.
- (b) Time is of the essence in relation to the payment of Goods.
- (c) If payment is not paid when due, the Buyer shall pay interest on daily balances on the amount unpaid from the date due for payment until paid at the rate of 2% over the overdraft rate quoted to the Seller by its bankers.
- (d) All losses, expenses and costs (including legal fees) on an indemnity basis, consequent upon the Buyer’s failure to pay on the due date, are recoverable from the Buyer by the Seller as liquidated damages.

7. DELIVERY

- (a) The Seller will use all reasonable endeavors to deliver Goods on the agreed date (“**Delivery Date**”), but:
 - (i) the Delivery Date is subject to extension for any delay caused by strikes, lockouts, war, breakdown, accidents, delays in transport, fire or any cause beyond the reasonable control of the Seller; and
 - (ii) the Seller will not be liable for any loss, damage or other liability (whether in contract, tort or otherwise) and whether direct or indirect arising out of delay in delivery.
- (b) The Seller may deliver the Goods in instalments, which the Seller may separately invoice.
- (c) Goods returned are only accepted with the prior written approval of the Seller and may be subject to a 10% handling/re-stocking fee. Goods specifically manufactured by the Seller to the Buyer’s Order are non-refundable.

8. RISK AND PROPERTY IN GOODS

- (a) All risk of loss or damage will pass to the Buyer upon delivery of the Goods to the first carrier.
- (b) The Seller retains full title to the Goods until all monies due for all Goods sold to the Buyer have been paid.
- (c) Until such time as title passes in accordance with paragraph (b) above the Buyer:
 - (i) shall hold the goods as bailee for and agent of the Seller on the terms set out in these Sales Conditions;
 - (ii) will not sell, encumber or dispose of the Goods and will keep the Goods safely, securely and separately stored in a manner which clearly indicates that they belong to the Seller; and
 - (iii) may use the Goods as agent of the Seller and as authorised by the Seller to manufacture new products (“**Manufactured Products**”). The Manufactured Products shall be the property of the Seller.

- (d) The Buyer is authorised to sell, or agree to sell, the Goods or any Manufactured Products as agent of the Seller until such time as title passes to the Buyer provided that:
 - (i) the Buyer shall not represent or hold out to third parties that it is acting as agent of the Seller and the Seller shall not be bound as principal by any contracts between third parties and the Seller;
 - (ii) all proceeds of sale of any Goods or Manufactured Products shall be paid into a separate account on behalf and on trust for the Seller from which the Buyer shall account to the Seller for the purchase price of the Goods.

10. WARRANTIES

Subject to clause 11(a), the Seller warrants the Goods will conform to the specifications expressly agreed to in writing by the Seller.

11. LIABILITY

The Buyer agrees that:

- (a) the Seller shall not be liable for any error, omission or inaccuracy in the drawings or the specifications provided or approved by the Buyer;
- (b) except to the extent set out in clause 10 or prohibited by law, the Seller makes no warranty or representation in relation to the Goods and any conditions or warranties otherwise implied by statute or any other law are expressly excluded;
- (c) the only remedy of the Buyer against the Seller for any loss, damage or liability (whether in contract, tort (including negligence or otherwise) for loss of profits or production or any indirect or consequential damages of the Buyer shall be limited to the Seller, at its option, to replacing or repairing or resupplying the Goods at the point of manufacture

12. DEFECTIVE GOODS

The Buyer will complete inspection of the Goods after their delivery to the agreed location. The Buyer unconditionally accepts the Goods unless it makes a claim in writing to the Seller within 14 days of delivery.

13. BUYER’S INDEMNITY

The Buyer indemnifies the Seller, its agents and employees against all claims, demands, actions, costs (including legal costs), charges, expenses, loss, damages or other liability arising from any:

- (a) loss or damage to any property or the death of or injury to any person in connection with the supply or use of any of the Goods; or
- (b) the Seller infringing any patent, design or other intellectual property supplied by the Buyer.

14. SUBCONTRACTING

Unless otherwise agreed in writing the Seller may, without the Buyer’s consent, engage contractors to carry out the whole or any part of supply or manufacture of the Goods.

15. DEFAULT, INSOLVENCY AND TERMINATION

If the Buyer:

- (a) commits a substantial breach of the Sale Conditions, including unreasonably refusing to accept or failing to accept any of the Goods;
- (b) becomes bankrupt, insolvent or a liquidator, receiver, manager, administrator is appointed or an application for winding up is made in relation to the Buyer or the Buyer enters into a composition or arrangement with creditors;

the Seller may:

- (c) immediately terminate the sale of any of the Goods, by notice in writing to the Buyer;
- (d) refuse, suspend or withhold further supply of the Goods;
- (e) revoke any credit the Seller may provide to the Buyer; or
- (f) enter upon (either personally or by its agents) any premises in the possession or control of the Buyer and use reasonable force for the purposes of retaking possession of any Goods or any Manufactured Products. The Seller is not liable to the Buyer for any loss or damage caused in the recovery of the Goods or any Manufactured Products.

16. INTERNATIONAL SALES

The Seller and the Buyer hereby exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.

TERMS AND CONDITIONS

17. FORCE MAJEURE:

Seller shall not be liable for any breach of its contractual obligations if performance of its obligations is suspended, delayed or interrupted or rendered impossible or impractical for reasons of Force Majeure. If an event of Force Majeure negatively impacts Seller, it shall be entitled to an extension of time in which to perform its contractual obligations and Seller and Buyer shall negotiate any change to their contractual arrangements including time periods and price in good faith.

Force Majeure means events outside or beyond Seller's reasonable control including without limitation Acts of God, flood, earthquake, or other natural disaster; epidemic or pandemic; war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions; terrorist attack, civil war, civil commotion or riots; nuclear, chemical or biological contamination or sonic boom; any law or government order, rule, regulation or direction, or any action taken by a government or public authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition, or failing to grant a necessary license or consent; fire, explosion or accidental damage by a third party; loss during transportation; adverse weather conditions; interruption or failure of utility service, including but not limited to electric power, gas or water; any labor dispute, including but not limited to walkouts, strikes, industrial action or lockouts (other than by Seller's employees); non-performance by Seller's suppliers, inability to obtain raw materials; and unexpected failure of plant machinery, machinery, computers or vehicles.

If an event of Force Majeure lasts more than 3 months or immediately renders Seller's performance impossible or impractical, Seller shall be entitled to terminate its contractual obligations by notice to Buyer and without penalty and shall be entitled to payment by Buyer of a pro-rata sum of the price to reflect Goods delivered by Seller up to the date on which it terminated its contractual obligations. Seller reserves the right to allocate its available supply of materials among any or all purchasers, as well as departments and divisions of Seller on such basis as it may deem reasonable, fair and practical, without liability for any failure of performance relating to the contractual arrangements with Buyer.

18. GOVERNING LAW

The laws of New South Wales shall apply to these Sale Conditions and the parties submit to the jurisdiction of the courts in that State.