

1. Scope, Special Terms, Written Form, Differing Terms of Sale

- 1.1 These International Terms and Conditions of Purchase (**General Terms**) shall be incorporated in and form an integral part of each contract between KAEFER Integrated Services Pty Ltd ("**Buyer**") and supplier ("**Supplier**") for the purchase and supply ("**Purchase Order**") of certain material, products and services ("**Goods**"). Buyer and Supplier shall collectively be referred to as "**Parties**" and individually as "**Party**".
- 1.2 Particular circumstances shall be additionally governed by special terms and conditions of Buyer ("**Special Terms**"), to which reference shall be made in the Purchase Order or hereinafter, where appropriate. The Special Terms shall be transmitted to Supplier on request. In the case of any discrepancy or inconsistency among the Purchase Order, the Special Terms and these General Terms, the documents shall prevail over each other in the priority listed before.
- 1.3 Changes and amendments to these General Terms or to Special Terms have to be made by written and signed agreement between the Parties clearly presenting the content otherwise it will be invalid, unenforceable and not binding on the Parties ("**Written Form**").
- 1.4 Any other general term(s) and condition(s) contrary to or different from these General Terms, implied terms or from the Special Terms will not apply and shall not form part of any Purchase Order between the Parties, even if those terms were not rejected explicitly in any individual case, unless otherwise specifically agreed in Written Form.
- 1.5 The Supplier shall deliver Goods by himself and must not assign, transfer, charge or subcontract its rights to Sub-Suppliers. The Buyer's consent in a Written Form shall be a condition precedent to conclude any further agreement with Sub-Suppliers.
- 1.6 Any notice or other communication given to a party under or in connection with these General Terms shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as may have been specified in writing in accordance with this clause, and shall be delivered personally or sent by prepaid registered post or other next day delivery service, or by commercial courier or facsimile

2. Purchase Order, Delivery Schedules, Modifications and Changes

- 2.1 Purchase Orders require an order by Buyer and an order confirmation by Supplier to be effective.
- 2.2 Buyer's order expressly limits acceptance to the terms of the Purchase Order, the General Terms and the Special Terms. Any additional or different terms, even non-material modifications to a Purchase Order, General Terms or the Special Terms are rejected unless expressly agreed to in Written Form. Any delivery release shall become binding if Supplier does not reject such delivery release within two weeks of receipt.
- 2.3 Buyer may, at any time demand modifications of any Purchase Order, order or delivery release including, but not limited to modifications of the specifications, scope of works product design, processing, drawings, and construction, date and place of delivery, packaging, quality, quantity and means of transportation. If such modifications or changes result in an increase or a reduction of Supplier's costs or in a delay of delivery, Supplier shall inform Buyer immediately but no later than within 7 days of receiving the Buyer's demand for modification. If a Purchase Order has already been signed, the Parties shall agree in Written Form on a reasonable adjustment of the Purchase Order.
- 2.4 Any modifications or changes to the Goods by Supplier (including, without limitation, modifications to specifications, product design, processing, drawings, construction, date and place of delivery or production, packaging, quality, quantity and means of transportation) requires Buyer's prior consent in Written Form.
- 2.5 The volumes set out in any tenders or offers are solely assumptions, e.g. for the purpose of price calculation, and does not establish any obligation, representation, guarantee or undertaking by the Buyer to order such volumes. Delivery quotes set out in any Purchase Order is not in any way related to any volumes in tenders or offers. These General Terms do not prevent the Buyer from entering into agreements with third parties for the purchase of equivalent or similar goods or services to those supplied by the Supplier under the Purchase Order, these General Terms and any Special Terms.

3. Packing, Marking, Shipment

- Supplier will pack and mark Goods and make shipments in accordance with Buyer's instructions, meet carrier and legislative requirements, comply with all Buyer's transportation routing instructions and assure delivery free of damage and deterioration. Supplier is liable for losses suffered by Buyer as a result of packing, marking or shipping the Goods in an inappropriate manner or contrary to the instructions of Buyer. The costs incurred by the Supplier in the delivery of the Goods is included in the purchase price.

4. Payment, Right of Retention, Assignment, Set-off, Transfer of Title

- 4.1 Unless otherwise agreed in the Purchase Order, payment shall be made pursuant to Buyer's payment procedure. Payment will be due on the 25th of the month following receipt of the invoice and delivery.
- 4.2 In case of defective deliveries or in case Goods are not supplied in accordance with the Purchase Order, Buyer shall be entitled to withhold payment equivalent to the missing value until the Defective Goods have been replaced or Supplier has fulfilled its obligations in full.
- 4.3 Without the prior consent of Buyer in Written Form, Supplier shall not be entitled to assign its receivables to third parties or to have such receivables collected by third parties.
- 4.4 Buyer shall be entitled to rights of set-off against Supplier unless prohibited by applicable law.
- 4.5 Title to the Goods shall pass to Buyer upon delivery of the Goods. The Supplier warrants that it has complete ownership of the Goods free of any liens, charges and encumbrances and that the Buyer will be entitled to clear title to and complete possession of the goods upon payment for them. If the Buyer rejects the Goods because the Goods do not conform to the requirements in the Purchase Order, then title does not pass to the Buyer until Goods complying with the requirements in the Purchase Order are delivered to the Buyer.
- 4.6 The Supplier shall not assign, transfer, charge, subcontract, declare a trust or otherwise deal in any other manner with all or any of its rights or obligations under these General Terms and in relation to the Goods

except with the prior consent of the Buyer in a Written Form.

- 4.7 The Parties agree that if the Buyer determines that these General Terms, the Purchase Order or any Special Terms (or a transaction in connection with each of these documents) is or contains a security interest for the purposes of the *Personal Property Securities Act 2009* (Cth) (**PPSA**), the Buyer may make any registration or notification under the PPSA in connection with the security interest and the Supplier may not make an amendment demand in respect of that registration. The Supplier agrees to provide any information or documents that the Buyer reasonably requests to enable the Buyer to register or perfect, or give any notification in connection with, the security interest.
- 4.8 The Parties agree that to the extent the law permits: (a) The Buyer need not comply with, and the Seller may not exercise rights under, any provisions of Chapter 4 of the PPSA that may be contracted out of; and (b) the Seller waives its rights to receive any notice that is required by the PPSA (but this does not prohibit the Buyer from giving such notice).
- 4.9 The Parties agree that despite anything else in these General Terms, the Purchase Order and any Special Terms, neither Party may disclose any information in connection with this document under section 275(4) of the PPSA unless section 275(7) of the PPSA applies.

5. Delivery Dates and Time Limits

Time is of the essence for the performance of the obligations under the Purchase Order, these General Terms and any Special Terms. Agreed delivery dates and time limits are binding. Delivery must be effected within the time specified in the Purchase Order or delivery release or as otherwise agreed in Written Form. In case of any delay Buyer is entitled to claim for Liquidated Damages, specified in Purchase Order and/or Special Terms. Buyer is entitled to damages at common law if Liquidated Damages is not specified.

6. Force Majeure

- 6.1 In case of Force Majeure affecting the fulfillment of a substantial provision of the Purchase Order, these General Terms or any Special Terms, the Party so affected, upon giving prompt notice to the other Party, shall be temporarily excused for the performance of its obligations to the extent of the prevention, and shall not be committed to the payment of any compensation but shall use its best efforts to minimise the consequences, to remove the cause of non-performance, to co-operate with the other Party in finding alternative ways and means of fulfilling its obligations, and shall make up, continue and complete full performance hereunder without delay whenever such causes are removed. The Parties shall endeavour to adapt the Purchase Order, including these General Terms and any Special Terms, to the new situation. In case the Parties do not agree upon such adaptation within a period of 30 days of the relevant event of circumstance constituting Force Majeure, the Purchase Order may be terminated by the Buyer through a written notice without need for any further legal or judicial action.
- 6.2 Force Majeure shall mean all events beyond the reasonable control of the Party affected, unforeseeable and unavoidable, which prevent or delay in total or in part the carrying out of its obligation (e.g. fire, flood, accidents, war, riots, acts of court, insurrection, civil disturbance, acts of government, governmental regulations, strike, lock out or other labour disputes).
- 6.3 The prompt notice, mentioned above in sub - clause 6.1. shall be given by the affected Party as soon as reasonably practicable and not later than 7 days of the occurrence of the relevant event or circumstance constituting Force Majeure, failing which the affected Party shall lose the right of being temporarily excused for the failure in performance of its contractual obligations.

7. Inspection of Goods, Notification of Defects

- 7.1 The Inspection carried out at Buyer's premises is restricted to the comparison of delivery note data with the Goods labels, checking the number of load units and checking external transportation damage which is clearly visible on the packing. There are no more far-reaching examination obligations for Buyer. Buyer shall notify Supplier by written notice of any deficiency of Goods or Defects once the Defect has been discovered by Buyer in the ordinary course of its business.
- 7.2 Any payments as to the purchase price or acceptance of Goods affected prior to the discovery of any Defects shall not be deemed an acknowledgement of the Goods being free of Defects and shall not release Supplier from its warranty and guarantee obligations under these General Terms.

8. Warranty

- 8.1 Supplier warrants that the Goods are new and of merchantable quality, free from any defects in design, material and workmanship according to the agreed specifications, drawings, descriptions or samples, all technical standards and performance criteria applicable to the Goods, the state of the art and the suitability for the purposes contemplated by the Purchase Order ("**Defects**"). Supplier further warrants that the Goods shall comply with all applicable national, federal, state and local laws and regulations in the relevant sales markets related to the Goods. The Supplier will obtain, at the Supplier's expense, any necessary licenses, permits, qualifications, registrations and other statutory requirements necessary for performance of its obligations under the Purchase Order, these General Terms and any Special Terms.
- 8.2 No inspections, tests, approval, or acceptance of Goods shall relieve Supplier from liability for Defects or other failure to meet the requirements of Purchase Order, latent defects or failure by Supplier to meet warranty obligations hereunder.
- 8.3 The Warranty Period for the Goods shall commence on the date of delivery of the Goods to Buyer and end either
 - a. 48 months after the date of delivery of the Goods; or
 - b. on the expiry of any warranty issued to end-customers of the Goods, or of any products into which the Goods have been incorporated, whichever of the above dates or events is earlier. Any longer warranty periods prescribed by the national laws of any sales market into which any Goods, or products into which Goods have been incorporated, are delivered, shall supersede the provisions of this Clause. Notwithstanding the above, Supplier waives its right to reject any warranty claim of Buyer due to a plea of statute of limitations during a fifteen (15) months period after the end of the calendar year in which the Defect was remedied. The Warranty Period starts running anew

- from the moment the Defective Goods are remedied.
- If the Goods have any Defects ("**Defective Goods**") Supplier shall be liable during the Warranty Period unless the Defects have been caused by any of the following:
- i. improper handling, use or changes in the structure by the owner or user unless it results from defective instructions or information provided by the Supplier;
 - ii. defects in materials provided by Buyer to Supplier for the manufacture of the Goods provided that Supplier has timely fulfilled its obligations, in particular that Supplier has notified Buyer of these Defects as soon as Supplier has known or ought to have known these;
 - iii. Defects in the design and specifications provided by Buyer to Supplier for the manufacture of the Goods.
- In any case of Defective Goods and without prejudice to any other rights Buyer may be entitled to under the Purchase Order and/or applicable law, Buyer shall have the right to reasonably elect to demand any of the following remedies according to the specific circumstances:
- i. repair, rework or replacement of Defective Goods; or
 - ii. abatement of the purchase price in proportion of the reduced value and return by Supplier to Buyer of any purchase price already paid which is in excess of the reduced value; or
 - iii. return the Defective Goods to the Supplier against return of any monies paid to the Supplier as consideration for these Goods; or
 - iv. execution by Buyer itself or any third party of the remedies in (a) above and reimbursement of any related costs incurred by Buyer.
- The Buyer is entitled to elect the remedy in its sole discretion and in whichever order. Electing one remedy does not exclude the possibility to demand another remedy relating to the same Defect thereafter
- 8.4 In addition to Buyer's rights under Clause 8.3 and notwithstanding any other rights Buyer may be entitled to under the Purchase Order and/or applicable law, Supplier shall indemnify, hold Buyer harmless for, and compensate any damage, losses, costs, expenses and third party claims ("**Claims**") caused by Defective Goods.
- Buyer shall have the right to inspect the Goods at Supplier's site for Defects and their conformity with the contractually agreed quality.
- 8.5 Notwithstanding clauses 8.1 – 8.4. above, Supplier shall provide the Buyer with a guarantee for the quality of Goods under the conditions specified in the Purchase Order. The Buyer may exercise its rights under the abovementioned warranty irrespective of his rights under a guarantee. Regardless of any other provisions herein or in a Purchase Order or Special Terms, the guarantee period starts running anew from the moment the Defective Goods are delivered defect-free or the repaired Defective Goods are returned to the Buyer.
- 9.0 Liability, Indemnification, Remedies**
- 9.1 If Supplier breaches any of its contractual obligations it shall compensate Buyer for the damage or loss incurred.
- 9.2 If a claim or a lawsuit based on product liability involving the Goods delivered by Supplier is brought against Buyer, Buyer shall defend itself against such claim or lawsuit and Supplier shall bear the costs incurred thereby, except where Supplier is able to prove that the relevant costs incurred arose from the design by Buyer or Buyer's manufacturing instructions.
- 9.3 The Parties shall cooperate to prevent, defend, or draw up counter-measures against the claim or lawsuit as referred to in Clause 9.2 above.
- 9.4 Supplier will defend, indemnify, and hold Buyer harmless from and against all Claims, liabilities, losses, damages, and settlement expenses, including court costs and legal expenses, in connection with any breach by Supplier of the Purchase Order or the General Terms or any Special Terms or for injury or death of any person and damage or loss of any property allegedly or actually resulting from or arising out of (1) any culpable act/omission or negligent work of Supplier or its employees, agents, or subcontractors in connection with the performance of the Purchase Order or the General Terms or any Special Terms, either on Buyer's property or in the course of their employment, or (2) any failure of Supplier or Supplier's employees, agents and subcontractors to comply with any applicable law, governmental regulations, ordinance and/or statutes. On request, Supplier shall reasonably support Buyer in the defense against third party claims. The Supplier is obliged to pay all sums claimed against the Buyer by a third party in connection to such breaches, directly to the third party immediately after notification by the Buyer about such claim. This clause shall survive termination of the Purchase Order.
- 9.5 The rights and remedies herein reserved to Buyer are cumulative and in addition to any other or further rights and remedies available at law or in equity. No waiver of any breach of any provision of the Purchase Order or the General Terms or the Special Terms will constitute a waiver of any other breach or a waiver of such provision.
- 9.6 In case of breach, Supplier shall compensate Buyer for assembly/disassembly costs and recall costs in case of faulty supply.
- 10. Insurance**
- 10.1 Supplier shall effect and maintain at its sole expense insurance policies with reputable, financially sound insurance companies for the entire period it has any obligations to the Supplier under a Purchase Order, these General Terms or any Special Terms; such insurance policies shall adequately cover Supplier's liabilities towards Buyer and third parties whether arising by statute relating to workers' compensation or product liability or at common law by any person employed by the Supplier in the delivery of the Goods in accordance with the laws of the jurisdiction in which each person is employed by the Supplier. Buyer is entitled to require certain insurance coverage and amounts to be taken out by Supplier. The coverage and amount of such insurance shall be decided by consultation between the Parties and/or specified in the Special Terms. Buyer may require Supplier to furnish evidence of the foregoing insurance and renewals thereof or any other information regarding such insurance.
- 10.2 The Supplier shall bear any and all excesses or deductible in relation to any claim on an insurance policy. Supplier must provide the Buyer with evidence of the currency of the required insurance on request. Buyer's failure to request any evidence of insurance hereunder will not relieve Supplier of its liability and shall not constitute a waiver of any requirement of this Clause 10. The existence of any insurance shall not limit Supplier's obligation under any provision hereof.
- 11 Intellectual Property Rights**
- 11.1 The Supplier shall be liable for ensuring that, in connection with delivery of the Goods, third parties' intellectual property rights are not violated.
- 11.2 In the event Buyer is held liable for the aforementioned by a third party, the Supplier shall indemnify and hold Buyer free and harmless, on first written demand, of any Claims for infringement or breach of any intellectual property rights. Buyer is neither entitled to reach any agreement nor even to come to compromise with the third party, without the Supplier's consent. The Supplier is obliged to pay all sums claimed against the Buyer by a third party in connection to such breaches, directly to the third party immediately after notification by the Buyer about such claim. This clause shall survive termination of the Purchase Order, these General Terms or any Special Terms.
- 11.3 The release obligation relates to all necessary expenses which are incurred as consequence of or in connection with the claim of a third party.
- 11.4 The limitation period shall be ten years, counted from the conclusion date of the Purchase Order.
- 11.5 The Supplier shall transfer to the Buyer any intellectual property rights or grant the Buyer with a non-exclusive, perpetual, irrevocable, fully paid, transferable, sub-licensable license to use, reproduce, exploit and adapt the intellectual property rights, if any, in the delivered Goods. Price settled by the Parties in Purchase Order or any other document constituting the Purchase Order shall include the Price for such transfer or license. Supplier is not entitled to claim any additional payment for such transfer or license.
- 12 Confidentiality, Advertising**
- 12.1 The Supplier commits itself to deem as business secrets and to keep confidential all commercial and technical information of the Buyer and its business which comes to its knowledge during the course of the Parties business relationship unless such information is or becomes public through no breach of the Supplier of any of its obligations and to keep such information confidential and not to use such information for its own benefit or for benefit of a third party.
- 12.2 The specifications, designs, manufacturing data, drawings, models, patterns, samples and similar objects relating to the Goods and provided by Buyer in connection with the performance of the Purchase Order shall at all times be the property of Buyer (or affiliated companies) and shall not be disclosed or made available or otherwise be made accessible to third parties without the prior consent of Buyer in Written Form. Supplier will use and maintain all of this information in a manner which ensures it is not used for any purpose detrimental to the interests of Buyer.
- 12.3 Sub-suppliers shall be made to commit themselves accordingly to the confidentiality provisions contained in this Clause 12.
- 12.4 Unless otherwise agreed in Written Form or unless required by mandatory applicable law, Supplier will not in any manner disclose confidential information of the Buyer or publish the fact that Supplier has furnished or contracted to furnish Goods to Buyer. Supplier shall not use the name or trademarks of Buyer, or its products in Supplier's advertising or other publication.
- 12.5 The provisions of this Clause 12 shall survive the expiration or termination of any Purchase Order, General Terms and/or Special Terms.
- 13 Termination**
- 13.1 Buyer may at its absolute discretion and without having any reasons terminate the Purchase Order in whole or in part for its convenience by giving written notice to the Supplier.
- 13.2 Without prejudice to any other termination rights provided herein or permitted by law, Buyer may also unilaterally terminate any Purchase Order for the part not yet performed without any liability on its part, if Supplier:
- a. is in material default with the delivery of the Goods or fails to perform any other material obligations of the Purchase Order, these General Terms or any Special Terms;
 - b. enters into any act related to bankruptcy, reorganisation, receivership or insolvency, makes an assignment in favour of creditors or is subject to non-judicial settlement proceedings with the Supplier's creditors,
 - c. is merged into another company in any form and/or is expropriated or nationalized,
 - d. infringes any rights as mentioned in Clauses 10, 11 and 12 of these General Terms.
- 13.3 Upon such termination under Clause 13.1 and 13.2, Buyer may claim from Supplier:
- a. to transfer to Buyer title to and possession of all or any part of such Goods manufactured or delivered by Supplier, while nothing in this shall affect Supplier's claims to payment for any amounts incurred in the satisfactory performance of its obligations under these General Terms up to the date of termination, together with any reasonable costs or expenses directly incurred by the Supplier in the termination of the Purchase Order (such as work in progress) in respect of which the Supplier is unable to mitigate and has provided full and proper substantiation to the satisfaction of the Buyer. The payment of such amounts shall be the Supplier's sole and exclusive remedy for the termination under clause 13.1;
 - b. to immediately return to Buyer all Goods owned by Buyer in which intellectual property rights of Buyer and related rights exist; and
 - c. that the Supplier indemnifies, defends and holds free and harmless the Buyer against all costs (including legal costs) or expenses incurred by the Buyer in obtaining delivery of the Goods elsewhere and/or arranging for a third party to supply or complete delivery of the Goods.
- 13.4 Nothing in the termination of any Purchase Order under this Clause 13 shall affect the Parties' rights and liabilities accrued by that time. Any provision which is to come into or continue in force after such termination, whether expressly or by implication shall remain unaffected.
- 14 Compliance**
- Supplier represents, warrants and agrees that neither the Supplier nor any of its related entities has engaged or will engage in any practices which may lead to civil, penal, regulatory or any other liability due to fraud or embezzlement, insolvency crimes, breaches of competition law, guaranteeing advantages, bribery, acceptance of bribes or other acts of corruption whether on the part of the Supplier, its related entities, persons employed by Supplier or other third parties. While carrying out its obligations under a Purchase Order or any other agreement between Buyer and Supplier, Supplier must comply with the KAEFER Code of Business Conduct. In the event of any breach of this clause 14, Buyer has the right to immediately withdraw from or terminate any and all legal transactions and agreements existing with Supplier, the right to end any and all negotiations with Supplier and the right to be compensated by Supplier for any loss or damage suffered. Nothing in this clause 14 relieves the Supplier of its obligations to comply with all laws and regulations applicable to both itself, its agreements with Buyer and the commercial relationship with Buyer.
- 15 GST**

**GENERAL TERMS AND CONDITIONS (GTC) FOR PURCHASE OF GOODS AND SERVICES**

- 15.1 For the purposes of this clause 15:
- (a) GST means Goods and Services Tax calculated in accordance with GST Law
 - (b) GST Act means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* as amended from time to time
 - (c) GST Law has the meaning given to that term in the GST Act.
- 15.2 Unless expressly stated otherwise in these General Terms, the Purchase Order or any Special Terms, all amounts payable or consideration to be provided under these General Terms are exclusive of GST.
- 15.3 If GST is payable on any supply made under these General Terms, a Purchase Order and any Special Terms, for which the consideration is not expressly stated to include GST, the recipient agrees to pay to the supplier an additional amount equal to the GST payable at the same time that the consideration for the supply, or the first part of the consideration for the supply (as the case may be), is to be provided. However: (a) the recipient need not pay the additional amount until the supplier gives the recipient a tax invoice or an adjustment note; (b) if an adjustment event arises in respect of the supply, the additional amount must be adjusted to reflect the adjustment event and the recipient or the supplier (as the case may be) must make any payments necessary to reflect the adjustment; and (c) this clause 15.3, does not apply to the extent that the GST on the supply is payable by the recipient under Division 84 of the GST Act.
- 15.4 If a party is required under these General Terms to indemnify another party, or pay or reimburse costs of another party, that party agrees to pay the relevant amount less any input tax credits to which the other party (or to which the representative member for a GST group of which the other party is a member) is entitled.
- 15.5 Unless the context requires otherwise, for the purpose of this clause 15, a term which has a defined meaning in the GST Act has the same meaning when used in this clause 15.
- 16 Partial Invalidity, Governing Law, Place of Venue and Jurisdiction, Language**
- 16.1 Should one of the provisions of these General Terms or of any additional stipulations agreed upon, in the Purchase Order and any Special Terms, be or become invalid, the validity of the remaining part of these General Terms, the Purchase Order and any Special Terms shall not be affected thereby. The Parties are committed to replace the invalid provision by another provision with an equivalent commercial effect so far as possible.
- 16.2 If the Parties have not agreed otherwise, the terms of any Purchase Order (including these General Terms and any Special Terms) shall be governed by and construed in accordance with the law of Western Australia. The application of the Sale of Goods (Vienna Convention) Act 1986 (WA) and the United Nations Convention on Contracts for the International Sale of Goods 1980 (CISG) are expressly excluded.
- 16.3 For all disputes, controversies or differences between Buyer and Supplier arising out of or in relation to any Purchase Order or these General Terms or any Special Terms, including any dispute regarding their breach, termination, validity or interpretation, the Parties agree that the exclusive venue of jurisdiction for any action or proceedings commenced under any Purchase Order shall be Western Australia. Buyer shall also have the right to sue Supplier at the place where Supplier has its registered office or at any other legal place of venue.
- 16.4 For the duration of the court proceedings the Parties shall continue to exercise their remaining respective rights, and fulfill their remaining respective obligations under the Purchase Order, except insofar as the same may relate directly to the matters in dispute.
- 16.5 These General Terms are in the English language and, if required by mandatory applicable law, in the language spoken at Buyer's principal place of business, in this case both versions being equally binding.