



DEFINITIONS:

In this agreement:

Air-Met, We, Us and Our refers to Air-Met Scientific Pty Ltd (ABN 73 006 849 949) of 7-11 Ceylon Street, Nunawading VIC 3131, Australia.

Carrier means any person or business contracted by us to carry Goods from us to you, whether all or part of the distance.

Corporations Act means *Corporations Act 2001 (Cth)*.

Customer, You and Your means the entity or person acquiring the Goods and/or Services upon these terms.

Default Rate means the rate equal to 2% above the rate fixed under Section 2 of the Penalty Interest Rates Act 1983 (Vic) applicable as at the date of non-payment.

Goods means any goods we offer for sale.

GST has the meaning given to that term in the GST Law.

GST Law has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Insolvency Event means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event.

Order means an order by you to us requesting the supply of Goods and/or Services as set out in clause 2.

PPSA means the *Personal Property Securities Act 2009 (Cth)*.

PPSR means the Personal Property Securities Register established pursuant to the PPSA.

Services means work we perform for you whether it be at our, your or a third party's premises.

Secured Property means all Goods that are supplied to you by us (whether now or in the future).

Security Interest has the meaning given in section 12 of the PPSA.

Written Material means any informational material published by us in any medium with a view to providing information to our customers or prospective customers.

1. GENERAL

- a) We agree to sell and you agree to purchase the Goods and/or the Services in accordance with these terms.
- b) These terms shall apply to all Goods and/or Services sold or provided by us to you unless otherwise agreed in writing by a duly authorised representative of us.
- c) These terms are deemed to be incorporated into all contracts for the sale of Goods and/or Services by us to you, and will prevail over any inconsistent terms in any of your documents (including for the avoidance of doubt printed consignment notes or other documents, including even where one of our representatives signs such a document or annexure to one of our documents) unless otherwise agreed by us in writing.

- d) If you place an order or submit a purchase order with us for Goods and/or Services or enter into a contract with us and the Goods and/or Services are delivered or provided to you, or you provide any payments to us, you are taken to have accepted these terms.

2. ORDERS:

- a) It is your responsibility to provide all information necessary to enable performance of the Order and the Customer shall be responsible for any costs arising directly or indirectly from any error or omission in that information or delay in providing that information.
- b) All Orders shall constitute an offer and shall be subject to acceptance by us. We shall accept your Orders by letter, email fax or telephone. All Orders must be made in writing and as such any Order placed by telephone will not be despatched until we have received your written confirmation. Orders cannot be modified or cancelled after acceptance by us except with our prior written consent. We will not agree to cancellation of an Order unless you pay us a reasonable cancellation charge (as set by us) including compensation for all loss and damage arising from the cancellation of the Order.
- c) Orders with a value of \$50.00 or less may incur a \$10.00 administration fee.
- d) It is possible that the price may have increased from that posted in our Written Material. The price charged for Orders, will be in accordance with clause 4 below.
- e) All descriptions and specifications in Orders are those of the original manufacturers and you may not rely on their accuracy. Accordingly, any such description shall not form part of this agreement.

3. QUOTATIONS:

Any quotation for Goods and/or Services prepared by us is not an offer by us and may be withdrawn or altered without notice. Unless we withdraw it, a quotation is valid for the period stated in it, or if no period is stated, for 30 days after the date of the quotation.

4. PRICE AND COSTS:

- a) Unless we agree in writing and subject to any quotation given under clause 3, the price of the Goods and/or Services will be the price we usually charge and in accordance with subclause (b) below. Any price concession we provide to you is conditional on your full compliance with these terms.
- b) Prices quoted are in Australian Dollars unless stated otherwise and are those applying at the date of issue of quotation subject to adjustment (including a proportional adjustment for fixed costs and profit) for any variation in:
 - i) the cost of labour, material or transport;
 - ii) exchange rates, customs duty, freight, shipping expenses, sorting and tracking charges or insurance;
 - iii) supplier's prices;
 - iv) the amount of work required to produce the Goods due to a variation in specification approved by you and us; and
 - v) any other charges affecting the cost of production.

5. DELIVERY AND TERMS OF SERVICE:

- a) Any delivery time we give you for the supply of Goods and/or Services is an estimate only. Subject at all



times to clause 13(A), we are not liable for any loss or damage (including any consequential loss or damage) arising from late delivery.

- b) You must accept and pay for the Goods and/or Services even if the delivery is late.
- c) We may deliver the Goods in instalments and each instalment must be treated as a sale under a separate sales contract.
- d) Deliveries of Goods and/or Services will be made by our Carriers to the address stipulated in your Order.
- e) Where you nominate to collect the Goods from us or use your own carrier, delivery is deemed to have occurred when we notify you that the Goods are ready to collect.
- f) In relation to us providing the Services and/or supplying the Goods, you must provide us with access to your premises for the purpose of supplying the Goods and/or providing the Services at such times as reasonably required by us, and for this purpose you must ensure that your premises are a safe working environment for us, our employees and agents to supply the Goods and/or provide the Services.
- g) You must indemnify us against any loss or damage suffered by us or as a result of us becoming liable to any third party (directly or indirectly) as a result of our or our employees or agents entering the premises for delivery or any other of your premises and delivering the Goods and/or providing the Services.

This clause 5 is at all times subject to clause 13(A).

6. PAYMENT TERMS:

- a) We will issue an invoice with respect to the Goods and/or Services, in the case of Goods at the time when the Goods are ready for collection / delivery (as applicable) whether or not the Customer wishes to collect / take delivery (as applicable) and in the case of Services at the time when the Services are completed (as determined in our sole discretion).
- b) Unless otherwise agreed, if you has an approved credit account with Air-Met, you must pay for goods and/or services within 30 days from the date of invoice or earlier if the approved credit limit is exceeded or payment for the order in full before delivery of goods or services
- c) You agrees that Air-Met shall have the right to decline to extend credit to you and to require that the applicable purchase price be paid prior to shipment
- d) You shall promptly notify Air-Met of all changes to trading's name, address, or of the sale of substantially of its assets
- e) Air-Met shall have the right from time to time, without notice, to change or revoke your credit limit on the basis of changes in Air-Met's credit policies or your financial condition and/or payment record
- f) You shall pay all costs of collection including reasonable attorney's fees
- g) If you are financing the purchase of the Goods using a third party, we must receive full payment for your Order before we will send any part of it.
- h) You will not be entitled to refuse to pay our invoice on the grounds that Goods have not been fully delivered or Services fully provided.
- i) We may in our sole discretion require immediate payment of all amounts outstanding (whether or not then due and payable);

- i) if you do not comply with any one or more of your obligations under these terms;
 - ii) if we consider that your creditworthiness has become unsatisfactory; or
 - iii) if one or more Insolvency Events occur
- j) Any monies owing under these terms which are not paid when due shall bear interest at the Default Rate, calculated daily and compounded monthly on and from the date such moneys first become due to us, including the date of payment to us in full.

7. GOODS AND SERVICES TAX:

- a) Unless otherwise stated, the price is GST exclusive.
- b) In addition to the price for the Goods and Services, you must pay us an amount equal to any GST that you must pay for any supply by us under these terms or under any agreement for the sale of Goods and Services.
- c) You must pay us GST, without deduction or set off of any other amounts, at the same time and on the same basis as you pay for the Goods or Services.

8. DISCREPANCIES AND RETURN OF GOODS:

Subject to clauses 13(A), if there is any discrepancy between Goods ordered and Goods delivered you must notify us in writing within seven (7) days from date of delivery to you, otherwise the Order will be deemed to have been delivered correctly in all respects and accepted by you. Written notices must give details of: (a) invoice number, (b) invoice date and (c) reported discrepancy. For the avoidance of doubt, you are responsible for all costs in relation to the return of any Goods to us.

9. DEFAULT:

If you default in the payment of money payable under these terms:

- a) We may charge you bona fide reasonable costs including the cost of any bank fees for dishonoured cheques, collection agency, solicitor or other legal or accounting costs incurred in the collection of monies overdue (on a full indemnity basis).
- b) We may give you a notice that, unless the default is remedied, all money owing to us including those amounts not yet due for payment are now due. If the notice is not complied with then that money becomes due.
- c) We may cancel any Order you have with us and, without prejudice to any other right or remedy available to us, suspend all further deliveries of Goods to you and sell or otherwise dispose of the Goods and apply the proceeds of the sale to the overdue amount.
- d) We may charge you interest in accordance with clause 6(j) above.

10. RISK AND TITLE:

- a) The risk in Goods shall pass to the Customer immediately upon collection by the Carrier or your nominated carrier from our warehouse.
- b) Title in the Goods shall not pass to you until:
 - i) you have paid us all amounts owing (and all cheques or negotiable instruments have been paid); and
 - ii) you have met all other obligations due by you to us in respect of these terms and all other contracts with us and you,and until the above obligations have been satisfied, you acknowledge and agree that:
 - iii) you hold the Goods as bailee only;

- iv) you must store the Goods supplied in such a way that it is clear that they are our property;
- v) you irrevocably authorise us to enter any premises where the Goods are kept and, if necessary, to use your name and to act on your behalf to recover the Goods; and
- vi) if you sell the Goods, you acknowledge that such sale is by you as agent for and on behalf of us and you must hold the proceeds of such a sale in a separate account on trust for us and identified as such in your books.

11. PPSA

- a) You acknowledge that these terms create a Security Interest in the Secured Property and, for avoidance of doubt, the proceeds of sale of the Secured Property for the purposes of the PPSA.
- b) You consent to us effecting a registration on the PPSR (in any manner that we consider appropriate) in relation to the Security Interest arising under or in connection with these terms and you agree to provide all assistance required by us to facilitate this.
- c) You acknowledge and agree that in relation to the part of the Secured Property that is inventory, you will not allow any Security Interest to arise in respect of that Secured Property unless we have perfected the Security Interest in the Secured Property prior to your possession of the Secured Property.
- d) If Chapter 4 of the PPSA applies to the enforcement of the Security Interest arising under or in connection with these terms, you agree:
 - i) to the extent that section 115(1) of the PPSA allows this, the following provisions of the PPSA will not apply to the enforcement of that Security Interest: section 95 to the extent that it requires us to give a notice to you, section 96, section 121(4), section 125 (obligation to dispose of or retain collateral), section 130 to the extent that it requires the Secured Party to give notice to you, paragraph 132(3)(d), subsection 132(4), section 142 and section 143 (reinstatement of security agreement); and
 - ii) to the extent that section 115(7) of the PPSA allows this, the following provisions of the PPSA will not apply to the enforcement of that Security Interest: section 127, section 129(2) and (3), section 132, section 134(2), section 135, section 136(3), (4) and (5) and section 137.
- e) If you make payments to us at any time whether in connection with these terms or otherwise, we may in our absolute discretion, apply that payment in any manner we see fit.
- f) You agree to immediately notify us of any changes to your name or address.
- g) You agree to do anything that we request you to do (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed):
 - i) to provide more effective security over the Secured Property;
 - ii) to register in respect of a Security Interest constituted by these terms at any time;
 - iii) to enable us to exercise our rights in connection with the Secured Property; and
 - iv) to show us whether you have complied with these terms.

- h) You shall pay on demand any losses arising from, and any costs and expenses incurred in connection with any action taken by us under or in relation to the PPSA, including any registration, or any response to an amendment, demand or a request under section 275 of the PPSA.
- i) Any notices or documents which are required or permitted to be given to us for the purposes of the PPSA must be given in accordance with the PPSA.
- j) You waive the right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

12. DISCLOSURE

- a) Both parties agree not to disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances required by sections 275(7)(b) to (e) of the PPSA. You agree that you will only authorise the disclosure of information under section 275(7) (c) or request information under section 275(7) (d), if we approve it.
- b) Nothing in clause 12 will prevent any disclosure by us that we believe is necessary to comply with our other obligations under the PPSA or under any other applicable law.
- c) To the extent that it is not inconsistent with clauses 12(a) and (b) above constituting a "confidentiality agreement" for the purposes of section 275(6)(a) of the PPSA, you agree that we may disclose information of the kind mentioned in section 275(1) of the PPSA to the extent that we are not doing so in response to a request by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.

13. WARRANTIES LIMITATION OF LIABILITY AND INDEMNITY:

A. Implied Warranties

- a) We acknowledge that where the supply of Goods and/or Services are "consumer" supplies, under applicable State, Territory and Commonwealth law(s) (including, without limitation, the *Competition and Consumer Act 2010 (Cth)* ("**Competition and Consumer Act**"), certain statutory express and implied guarantees and warranties (including, without limitation, the statutory guarantees under the *Competition and Consumer Act* will be implied into these terms ("**Non- Excluded Guarantees**").
- b) We further acknowledge that nothing in these terms purports to modify or exclude the Non-Excluded Guarantees.
- c) Except as expressly set out in these terms or in respect of the Non-Excluded Guarantees, we make no warranties or other representations under any contract with you or these terms. Our liability in respect of these warranties is limited to the fullest extent permitted by law.

B. Warranties

- a) You warrant and agree that you are not acquiring the Goods and/or Services for the purpose of:
 - i) re-supply or using them up or transforming them in trade or commerce in the course of:
 - a. a process of production or manufacture; or
 - b. repairing or treating other goods or fixtures on land; or



- ii) personal, domestic, household use or consumption;

and you are therefore not a "consumer" as defined by the Competition and Consumer Act.

- b) Subject to the limitations of this clause 13, we warrant that the Goods and Services supplied will be free from defects in material and workmanship, for a period of twelve (12) months from date of delivery of the Goods or performance of the Services unless the original manufacturer offers a greater or lesser period in which case that manufacturer's warranty period will apply.
- c) Subject to clause 13(A) for Goods, or any items and components incorporated in those Goods, which have a limited shelf life, our warranty will not extend beyond the expiry date of that item.
- d) Subject to this clause 13, where we are not deemed to be the manufacturer of the Goods (as defined in under the Competition and Consumer Act), Air-Met extends to the Customer the benefit of the warranty, if any provided to Air-Met by its suppliers in relation to the particular Goods supplied by Air-Met to the Customer pursuant to these terms.
- e) Filters, hydrophobic barriers, sinters, batteries, pump diaphragms & valves, electrodes and any other items of a consumable nature are not covered by the warranties in this clause 13
- f) For any Goods which are permanently installed, site visit and repair charges at ruling rates will apply if the repair or replacement of the Goods is deemed by us to be the result of any of the occurrences listed in clause 13.B (c).
- g) The warranty given by us in this clause 13 are given by Air-Met Scientific Pty Ltd (ABN 73 006 849 949), of 7-11 Ceylon Street, Nunawading VIC 3131, Australia. Ph – 1800 000 744. E: sales@airmet.com.au. All Goods subject to warranties must be returned to us or our nominated representative for inspection and assessment at your cost.

C. Guarantees

Our Goods that are classified as "consumer" goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable damage. 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. This warranty against defects is given in addition to other rights and remedies of the consumer under law.

D. Limitation of Liability and Indemnity

- a) The only conditions, warranties and guarantees which are binding on us in respect of:
 - i) information, advice, recommendations or services supplied to you in relation to the Goods; or
 - ii) the suitability, use, quality or condition of the Goods or Services,are those applying by operation of law and required to be binding and any expressly set out in these terms. Otherwise, all other warranties and conditions are excluded.
- b) Subject to this clause 13 and to the extent permitted by law, our liability (and that of our employees or agents) for a failure to comply with a Non-Excluded Guarantee, shall be limited to, in the case of a failure other than a major fault, at our option to: :

- i) in the case of Goods:
 - a. the replacement of the Goods or the supply of equivalent goods;
 - b. the repair of the Goods;
 - c. the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
 - d. the payment of having the Goods repaired; and
- ii) in the case of Services:
 - a. the supplying of the Services again; or
 - b. the payment of the cost of having the Services supplied again.
- c) Other than as provided in this clause 13 and so far as may be permitted be law, if we fail to comply with the Non-Excluded Guarantees and it cannot be remedied or is a major failure, your right to recover damages is limited to the reasonably foreseeable loss or damage suffered by you as a result of that failure. However we are not liable for loss or damage that results from our failure to comply with the Non-Excluded Guarantees if that failure was caused independent of human control and occurred after the Goods left our control.
- d) In circumstances where the Non-Excluded Guarantees do not apply our employees and agents shall not be liable for any loss or damage (including any consequential loss or damage, which includes, without limitation, loss of profits and loss of revenue) of any kind whatever even if due to our negligence or that of our employees or agents.
- e) Subject to clause 13 you acknowledge that you do not rely on our skill or judgement as to whether or not the Goods and/or Services are fit for any particular purpose.
- f) Subject to clause 13, you indemnify us from every liability, loss, damage, cost or expense directly or indirectly incurred or suffered by us caused by or contributed to by any of the following:
 - i) our compliance with any of your instructions about the Goods and/or Services;
 - ii) your or your employees' failure or any third party associated with you failure to:
 - a. adequately provide or display safety markings or safety information on or with the Goods and/or Services;
 - b. comply with any law about the Goods and/or Services or their use (including for example their sale, marketing, labelling or marking);
 - c. take any reasonable precaution to bring to the attention of any potential users of the Goods and/or Services any dangers associated with the Goods and/or Services;
 - d. take any reasonable precaution to detect any matters in relation to which we may become liable in any way (for example, under the (\Competition and Consumer Act);
 - e. provide correct information to us;
 - f. use and maintain the Goods in accordance with the manufacturer's instructions and or any other written materials supplied with the goods relating to the storage, installation, operation and servicing of the Goods; and
 - g. use of the Goods under conditions for which they were not designed.
 - iii) you making any statement about the Goods and/or Services (for example, about their

- performance or characteristics) without our approval;
 - iv) your or any third parties use or operation of the Goods and/or Services;
 - v) any negligence or breach of duty by you or any party or any breach by you or any third party of these terms;
 - vi) any workmanship or procedure performed by your or a third party;
 - vii) any misuse, neglect or alteration by you, your agents, your employees or any third party of the Goods; and
- g) The limitations of liability in this clause 13 shall survive any termination or expiration of these terms.

14. REPAIRS:

- a) Goods returned by you to us for repair should be accompanied by a full report listing the faults found and the work required to be done.
- b) No work will commence until you provide us with an official order number or written authorisation to proceed with the repair. A quotation charge may apply if the work does not proceed.

15. INSTALLATION AND COMMISSIONING:

- a) Unless itemised separately, prices quoted do not include installation or commissioning.
- b) Installation and commissioning work will not commence until you provide us with an official order number or written authorisation to proceed.
- c) Delays caused in relation to the provision of Goods and Services as a result of additional materials being required due to site and other conditions both beyond our control and not made clear to us or our appointed representative at the time of inspection or quoting for installation or commissioning, will be at your sole expense. Should such delays occur or additional materials be required, you must give us written authorisation to continue with the work. Should such authorisation not be given, the work will cease and any materials used and labour charges up to that point in time will be at your expense.

16. PRIVACY AND CREDIT REPORTING

- a) We will collect information in relation to you for the purpose of providing the Goods and/or Services to you, in accordance with the laws relating to the collection and disclosure of personal information under the *Privacy Act 1998 (Cth)* as amended from time to time.
- b) Where the Goods and/or Services are supplied to you on credit you irrevocably authorises us, our employees and agents to make such inquiries as we deem necessary to investigate your credit worthiness from time to time including (without limiting) the making of inquiries of persons nominated as trade referees, your bankers, or any other credit providers or credit reporting agencies (the '**Information Sources**') and you hereby authorise the Information Sources to disclose to us such information concerning you which is requested by us.

17. COPYRIGHT AND CONFIDENTIALITY:

- a) We retain ownership and copyright of all drawings, diagrams, descriptions, tables, specifications, etc. handed to or disclosed to you whether or not the same form part of or are enclosed with the quotation.

- b) In no circumstances shall any materials referred to in this clause be disclosed to third persons nor shall they be copied, multiplied or used for any purpose other than the purpose for which they are supplied, without our written consent.
- c) Any invention or improvement made by you and attributable in whole or in part to such specifications, plans, drawings, process information, patterns and designs shall become our property and you agree to do everything required to transfer that property to us (as the case maybe).
- d) Any materials mentioned in this clause shall immediately be returned to us on upon our request.

18. NOTICES:

- a) A notice, consent or other communication under these terms is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or fax. If it is sent by mail, it is taken to have been received [3] working days after it is posted. If it is sent by fax, it is taken to have been received when the addressee actually receives it in full and in legible form.
- b) The address or fax number used for any notice are those set out in the quotation or those last known to us. You must notify us in writing of any changes in your address or fax number.

19. GOVERNING LAW AND JURISDICTION:

- a) These terms are governed by the law in force in the state of Victoria, Australia excluding the United Nations Convention on the International Sale of Goods.
- b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the state of Victoria, and any court that may hear appeals from any of these courts, for any proceedings in connection with these terms, and waives any right it might have to claim that those courts are an inconvenient forum.

20. WAIVER:

- a) Any waiver of a right under these terms is only valid if it is in writing and signed by us.
- b) No other conduct by us (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right.
- c) A waiver of a right by us on one or more occasions does not operate as a waiver of that right if it arises again.
- d) The exercise of a right by us does not prevent any further exercise of that right or any other right.

21. OUR RIGHTS:

Any right that we may have under these terms is in addition to, and does not replace or limit, any other right that we may have.

22. SEVERABILITY:

Any provision of these terms which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make these terms enforceable, unless this would materially change the intended effect of these terms

23. VARIATION:

We are entitled to vary these terms at anytime by giving you 7 days' prior written notice,

24. ENTIRE AGREEMENT

These terms constitute the entire agreement between us and you and supersedes all prior representations,



contracts, statements and understandings, whether verbal or in writing. All other terms and conditions are excluded to the fullest extent permitted by law including any terms and conditions you may seek to impose.

25. ASSIGNMENT

Your must not assign your benefits or obligations under these terms without our prior written consent. We may assign our rights and obligations under these terms to another person without your consent.

26. FORCE MAJUEURE:

- a) We are not liable for failure to comply with these terms, any contract or an agreement for sale of Goods and/or Services if the failure (directly or indirectly) arises out of any circumstances which are not within our reasonable control. If such circumstances occur, we may delay or cancel delivery of the Goods and/or Services or reduce the quantity of Goods to be delivered and/or Services provided.
- b) The circumstances are taken to be beyond our reasonable control includes, without limitation, strikes, lock-outs, accidents, acts of sabotage, war, riot, fire, flood or other forces of nature, explosion, shortage of power, breakdown of plant or machinery, shortage of raw materials from normal source of supply, act of God or any order or direction of any local, state or federal government authority or instrumentality.
- c) We are not obliged to remedy such circumstances. We are especially not obliged to settle any strike, lock-out or any other kind of labour dispute.