

SUPPLIER TERMS & CONDITIONS

This Agreement applies to:

- 1.1 any Products or any quotations for or offers to supply Products; and/or
- 1.2 any Services or any quotations for or offers to supply Services; and/or
- 1.3 any other services in connection with Products (including installation and maintenance services) ("**Other Services**"), provided to the Company.

By providing Products or Services to the Company, the Supplier indicates its acceptance of all the terms and conditions in this Agreement.

1. In these terms and conditions:

"**Agreement**" means the agreement constituted by these terms and conditions, and any other written terms and conditions relating to the supply relationship between the parties which are agreed by both parties, notwithstanding any provisions to the contrary which may appear on invoices or any other documentation issued by the Supplier.

"**Confidential Information**" means any information provided by the Company to the Supplier concerning its product requirements, product specifications, business, customers (including customer names, contact details, product requirements, product spend details, the types and specifications of products and service supplied by the Company to its customers), contracts, system and system access details, customer ordering and business software, product cost and pricing, sales methods and techniques, sales figures, marketing plans, budget and other financial information, employee details, internal business policies and procedures, and any information generated during and as a result of the Agreement (including any pricing arrangements, rebate deals, settlement discounts, terms of payment, other terms of trade, joint marketing plans and artwork, design and specifications for any products manufactured specifically at the Company's request), but does not include:

- (a) information or knowledge which is already publicly known or which subsequently becomes generally publicly known other than as a direct or indirect result of a breach of this Agreement; or
- (b) information or knowledge which is required to be disclosed by law.

"**Company**" means Intercast & Forge Pty Limited ABN 28 090 515 334.

"**GST**" has the same meaning it does in Section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999 and any related or similar legislation.

"**Products**" means goods of the type customarily supplied by the Supplier, and ordered by the Company from the Supplier from time to time.

"**Services**" means the services which the Supplier is to provide to the Company, ancillary to the supply of the Products, and as otherwise requested by the Company from time to time.

"**Supplier**" means any company or persons who provide Products and Services to the Company.

"**Taxable Supply**" has the same meaning as it does in section 9-5 of the A New Tax System (Goods and Services Tax) Act 1999;

2. The Agreement with the Supplier is non- exclusive and the Company may engage any other person to provide the Products and/ or Services or similar products and services from time to time.
3. This Agreement does not oblige the Company to order any Products from the Supplier. A binding contract for the supply of Products only arises when the Supplier receives either a purchase order signed by an authorized representative of the Company or, where electronic trading has been implemented, an electronic order that complies with all the security and verification procedures established by the parties. The Supplier is deemed to have accepted a purchase or electronic order if the Supplier does not reject the order within 12 hours of receiving it.
4. This Agreement does not in any way imply a principal and agent or any similar relationship between the Company and the Supplier.
5. Invoices will be paid within 32 days of the end of the month in which the invoice is received, or such other time period agreed by the parties, provided that the invoice is correctly rendered, and complies with the Company's order. In the event of any claim by the Company against the Supplier, payment may be withheld until such claim is resolved.

An invoice is correctly rendered if:

- (a) the specified amount is correctly calculated, with the correct unit prices, and is otherwise due for payment;
- (b) the invoice is set out in a manner that enables the Company to ascertain the Products and/ or Services and services to which the invoice relates;
- (c) the invoice is accompanied (where necessary or where reasonably requested by the Company) by verifying documentation;
- (d) the invoice is addressed to the address notified by the Company from time to time; and
- (e) the invoice includes the Company's order number, the packing slip/delivery note number; any discounts applicable and reflects payment terms in accordance with this Agreement.

6. Credit Notes must be presented by the Supplier bearing the same address and layout details as an invoice.

7. The Supplier warrants that all Products supplied under this Agreement:
 - (a) are free from any contamination;
 - (b) comply with all relevant:
 - i) health;
 - ii) product packaging;
 - iii) transport, handling and storage;
 - iv) environmental;
 - v) weights and measures, and all other relevant legislation, regulations and other requirements of the Commonwealth and all States and Territories of Australia, standards and industry codes of practice;
 - (c) conform with the description given by the Supplier;
 - (d) conform with the specifications and the quantities stated in the relevant purchase order and with any samples provided, and otherwise meet the requirements of a purchase order;
 - (e) correspond with any sample in quality;
 - (f) are free from defects in workmanship and materials, of merchantable quality, free from defect or delivery, and are fit for the purpose and use for which they are acquired;
 - (g) are free from any lien or encumbrance, and the Supplier has good marketable title to them; and
 - (h) shall, for the lifetime of the product, perform at a level consistent with the Supplier's specifications and representations as to functionality and suitability for purpose, and otherwise satisfy and comply with the terms of any product warranty supplied with the product.
8. The Supplier warrants that it will:
 - (a) provide the Products and Services at all times exercising due care, skill and judgment, in a proper workmanlike manner, and in accordance with the Company's specifications;
 - (b) provide the Products and Services in the timeframes specified in the Agreement or as otherwise specified by the Company;
 - (c) ensure that all methods and procedures employed in performing the Services and supplying the Products are ethical and are, where possible, best practice methods and procedures currently employed in the industry;
 - (d) ensure that only qualified and experienced personnel work on the provision of the Products and Services;
 - (e) provide the Products and Services in accordance with all the Company's reasonable requirements and directions;
 - (f) prepare and submit to the Company such reports as are required as to the Supplier's performance as and when required by the Company;
 - (g) ensure that in providing the Products and Services all applicable laws and regulations are complied with; and
 - (h) ensure that no act or omission of the Supplier may or may be likely to prejudice or harm the interests of the Company.
9. Without limiting the application of any other clause, the Supplier warrants that:
 - (a) the Services and the results thereof will be free from defect or deficiency for a period of 12 months from the date at which they are completed;
 - (b) it understands all risks, difficulties, contingencies and other matters relating to performing the Services and the terms and conditions of this Agreement and is able to comply with the same;
 - (c) it has the resources, skill, competence, expertise, experience, knowledge and ability necessary to supply the Services and Products in accordance with this Agreement;
 - (d) it will provide all necessary on-site and off-site personnel needed to ensure it effectively meets its obligations under this Agreement;
 - (e) the personnel engaged by the Supplier in the performance of this Agreement are duly qualified to and will perform their obligations in a careful, skilful and diligent manner; and;
 - (f) it will have or will at its expense acquire all licences, permission, permits or authority required to perform the Services and supply the Products, including all intellectual property rights needed.
10. In the event of any breach of clauses 7, 8 or 9, and without limiting any other rights or remedies which may be available to the Company, the Supplier will, at the request of the Company, either provide the Products or Services again free of charge, rectify or pay the cost of rectification of any deficiency in the Products or Services, provide the Company with a credit in respect of the defaulting Products or Services or repay to the Company the price of the defaulting Products or Services. The Supplier must pay the cost and bear the risk of storing, handling and returning any Products rejected by the Company under clauses 7, 8 or 9.
11. The Supplier shall be liable for and shall indemnify the Company for all direct and indirect losses, damages and costs (including, but not limited to, any sums which are paid or payable by the Company to third parties and all economic and consequential losses) sustained or incurred by the Company as a result of the manufacture and/or supply of Products which do not comply with the warranties set out in clauses 7, 8 and 9. The said liability of the Supplier shall not be affected by any failure by the Company to inspect the defective Products upon or after delivery of the same or any failure by the Company to detect or discover the defect, whether or not such failure to inspect the Products or failure to detect or discover the defect was unreasonable or negligent in the circumstances, and it shall not be competent for the Supplier to assert or set up such a failure to inspect the Products or such a failure to detect or discover the defect or claim, action or suit by the Company in respect of the manufacture and/or supply of the defective Products.
12. (a) Without limiting the generality of clause 11 hereof, in the event that any Products supplied to the Company by the Supplier fail to comply with the warranties set out in clauses 7, 8 and 9 and this necessitates a recall of any product or thing incorporating the defective Products, whether such recall be made by the Company or any customer of the Company or any other party, the Supplier shall indemnify, protect and hold harmless the Company, its successors, assigns, customers and the users of its Products against all actions, claims, demands, expenses, costs and liabilities incurred or arising as a consequence of an such recall and without limiting the generality of the foregoing, the Supplier shall reimburse the Company for all costs and expenses incurred by the Company whether directly or indirectly as a result of or in connection with any such recall.

(b) For the purposes of sub-clause 12(a) above, costs and expenses incurred by the Company indirectly as a result of or in connection with any recall shall include any costs, damages or other moneys paid or payable by the Company to any other party as a result of or in connection with such recall.
13. The Supplier must transport or arrange for transport of Products to the required delivery destination:
 - (a) complying with the terms of a purchase order and the Company's instructions, and in any event, within the timeframes specified in a purchase order;
 - (b) by a method which provides adequate protection to the Products and prevents product deterioration; and
 - (c) accompanied by a delivery note clearly showing the following:

- i) the Company's order number;
- ii) description of Products and/ or Services;
- iii) quantity ordered, quantity received on this delivery; and
- iv) quantity on backorder.

14. The Company may change delivery schedules or delivery dates specified in a purchase order. The Supplier acknowledges that time is of the essence in delivering the Products.
15. Subject to clause 10, risk in and title to the Products will pass to the Company upon receipt of the Products by a duly authorised Company representative into the Company's nominated warehouse.
16. The Company may cancel an undelivered purchase order wholly or partly, whether or not the Supplier has started production or delivery of Products to meet that purchase order, and return any Product which is surplus to its needs without penalty. All Product returns in the case of breach of warranty or this Agreement will be at the Supplier's cost.
17. The Supplier will be solely responsible for and solely bear:
 - (a) the payment of remuneration to all its employees, agents and Suppliers, including salaries and wages, annual leave, sick leave, long service leave and all other benefits to which any of them may be entitled under any contract of service with the Supplier or under any award, statute or common law;
 - (b) the payment of all taxes and duties in respect of that remuneration and benefits;
 - (c) maintenance of, and the costs in respect of the maintenance of, adequate insurance in respect of workers' compensation and all other risks appropriate to the duties of the employees, agents and Suppliers; and
 - (d) compliance with, and all costs of compliance with, all other statutory, award or other legal or contractual requirements with respect to its employees, agents and suppliers.
18. The Supplier will and does indemnify the Company from and against any claim against or loss, cost or expense incurred by the Company arising out of any failure by the Supplier to comply with clause 17, or any allegation that there is any obligation on the Company to make any of the payments referred to in this clause, or any allegation of an employment relationship between the Company and any employee or consultant of the Supplier.
19. The Company reserves the right to deduct from the Supplier's invoices and fees any taxes or other such deductions the Company may consider necessary having regard to its legal obligations to make such payments in respect of the Supplier or this Agreement.
20. The Supplier acknowledges and agrees that the Company shall be the sole and exclusive owner of all intellectual property rights related to any and all Products, inventions, discoveries, modification innovations, enhancements, improvements, know-how, computer programs, screen displays, integrated circuits, adaptations, documentation, specifications, designs and all other works, articles, concepts or ideas developed, made, written, created, discovered or designed by the Supplier, its employees, agents and Suppliers, in the course of, or for the purposes of, providing the Products and Services (including all samples, drafts, moulds, artwork, designs, film and proofs). The Supplier hereby assigns such intellectual property rights to the Company, and agrees to execute such further documentation as the Company considers necessary in order to support this assignment of intellectual property rights. This clause does not affect the ownership of pre-existing intellectual property which shall continue to belong to its rightful owner, provided that the Supplier will ensure the Company has the non-exclusive perpetual free right to use the same for the purposes of this Agreement. Except for the purposes of this Agreement, the Supplier is not permitted to do any of the following, whether directly or indirectly through another person or entity, without the prior written consent of the Company:
 - (a) reproduce or manufacture, whether for sample purposes or otherwise, any product the intellectual property rights in which belong to the Company;
 - (b) reproduce, copy or display the image of any product the intellectual property rights in which belong to the Company; or
 - (c) give away, deal with, or sell any product the intellectual property rights in which belong to the Company.

The Supplier must return all product, documents and other materials, the intellectual property rights in which belong to the Company, on request, or otherwise upon termination of the supply relationship.

21. The Supplier undertakes and agrees not to, at any time either during the Agreement or after termination of the Agreement, either directly or indirectly, without prior written consent of the Company:
 - (a) disclose or permit (to the extent that it is within its control) the disclosure of, the Confidential Information to any person; or
 - (b) use or permit (to the extent that it is within its control) the use of the Confidential Information to compete with the Company, or in any manner which may injure or cause loss to the Company.

The Supplier undertakes and agrees to use the Confidential Information only during the course of, and for the purposes of, the provision of the Products and Services to the Company.

22. The Supplier agrees to and does indemnify the Company against any action, suit, claim, demand, cost or expense arising out of or referable to:
 - (a) any breach of this Agreement or any warranty contained in this Agreement by the Supplier, its officers, employees or agents;
 - (b) any infringement or alleged infringement by the Products, the Services or any materials and information provided by the Supplier under this Agreement of a third party's intellectual property rights;
 - (c) any damage, injury or loss caused by or resulting from any act or omission of the Supplier, its employees, agents or Suppliers; and
 - (d) all injury, loss or damage sustained by any officer, employee, agent or supplier of the Supplier incurred whilst performing obligations under this Agreement.
23. The Supplier must have in place sufficient insurances to cover its potential liability under the Agreement including but not limited to:
 - (a) A public risk and product liability insurance policy covering a liability of not less than \$10,000,000.

Upon request the Supplier will provide the Company with evidence of the currency and adequacy of such insurances.

24. This Agreement may be terminated by the Company at any time in its discretion by 14 days notice to the Supplier. The Supplier will have no claim against the Company for damages or loss of profits arising out of or relating to the termination of the Agreement by the Company.
25. The Company may at its sole discretion terminate the Agreement by giving notice effective immediately if at any time:

- (a) the Supplier is in breach of any of the terms of this Agreement; or
- (b) the Supplier is or becomes bankrupt, or goes into liquidation, or makes a composition or arrangement with creditors generally, or takes advantage of any statute for the relief of insolvent debtors or an event referred to in Clause 34 occurs.

26. Termination of the Agreement will not prejudice any rights or remedies already accrued to any party under, or in respect of any breach of, the Agreement.
27. On termination of the Agreement or otherwise on demand, the Supplier will return to the Company all documents and materials containing any Confidential Information or intellectual property of the Company and any other property belonging to the Company, including that created during the provision of the Products and Services. On or prior to termination, the Supplier will, within 14 days of request by the Company, do all such things as may be necessary to ensure the smooth and orderly transfer of the Confidential Information and intellectual property and the supply of the Products and Services to another provider.
28. Failure or omission by the Company at any time to enforce or require strict or timely compliance with any provision of this Agreement will not affect or impair that provision, or the right of the Company to avail itself of the remedies it may have in respect of any breach of a provision, in any way.
29. The Company may set off or deduct from any amount due and owing by it to the Supplier any amounts or compensation which the Company, in good faith, believes are due and owing by the Supplier to the Company. Before doing so, senior management of the Company will, in good faith, discuss and attempt to resolve any issue relating to the set off, with the Supplier.
30. The Agreement is governed by, takes effect and will be construed in accordance with the laws of South Australia and the parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of South Australia and courts entitled to hear appeals therefrom.
31. The Supplier warrants that at the time any Taxable Supply is made under this Agreement, it will be registered for GST purposes with an ABN number, and will provide evidence of the same on request. Any invoice rendered by the Supplier which seeks to recover an amount of GST payable, must conform to the requirements of a tax invoice as specified in GST law. Amounts payable by the Company to the Supplier for, or in connection with, any Taxable Supply under this Agreement do not include any GST (if applicable). If applicable, the Company must pay the Supplier an additional amount on account of GST equal to the amount payable by the Company under this Agreement for the Taxable Supply multiplied by the prevailing GST rate. The additional amount (if any) is payable at the same time as the amount for the Taxable Supply is payable by the Company to the Supplier.
32. The Supplier must comply with, and ensure its employees, agents and sub-Suppliers comply with all applicable laws and regulations governing its business operations including, but not limited to, equal opportunity and discrimination laws, and occupational health and safety laws.

The Supplier and its employees, agents and sub-Suppliers must, when within the Company's boundaries, on its premises or at its facilities, comply with all reasonable directions, policies, signs and procedures relating to occupational health, safety, security, discrimination and harassment, and ethical conduct.

33. In this clause:
- "Act"** means the Privacy Act 1988 (Cth)
- "Privacy"** Law means:
- (a) The Act; and
 - (b) the National Privacy Principles contained in Schedule 3 to the Act or any approved privacy code (as defined in the Act) that applies to Company, the Supplier or both; and
 - (c) any other statute, regulation or law in Australia or elsewhere which relates to the protection of Personal Information and which Company or Supplier must observe.

"Personal Information" means all information about a person that is 'personal information' as defined in the Act which is collected or held by Supplier in connection with this Agreement.

33.1 Supplier must:

- (a) observe the Privacy law and any Company privacy protocol provided to Supplier by the Company in respect of all Personal Information;
- (b) promptly follow any reasonable direction of Company in relation to Personal Information;
- (c) only use Personal Information for the purpose of this Agreement and not for the Supplier's own purposes;
- (d) ensure that only authorised personnel have access to Personal Information and all relevant personnel are properly trained to meet the requirements of this clause;
- (e) maintain complete and accurate records of the Supplier's use, copying and disclosure of Personal Information and immediately produce these records and the records of the Personal Information on request to Company or Company's nominee;
- (f) establish procedures which will enable the Supplier to observe the requirements of this clause and permit Company or its nominee to review these procedures;
- (g) provide reasonable assistance to Company to enable it to resolve any inquiry or complaint relating to Personal Information; and
- (h) immediately notify Company if it knows of or suspects unauthorised use, copying or disclosure of Personal Information it becomes aware that a disclosure of that Personal Information may be required by law; or any law prevents or may prevent it from performing its obligations under this clause.

33.2 Supplier indemnifies Company against any loss, cost, expense, damage or liability Company may suffer arising out of a breach by Supplier of this clause.

34. The Supplier must promptly notify the Company if any of these events occurs or is likely to occur to the Supplier:
- (a) a change in trade name or place of business;
 - (b) transfer of material business, amalgamation, or other similar event and, where the Supplier is a proprietary limited company (as defined in the Corporations Law), the allotment of any additional shares in the capital of that company or the sale or registration of the transfer of any shares in the capital of that company;
 - (c) a petition is filed for the liquidation or winding up of the Supplier;
 - (d) an assignment for the benefit of creditors or an arrangement under any law concerning bankruptcy or insolvency;

- (e) where the Supplier is a body corporate, a resolution for winding up;
 - (f) attachment of any assets or other execution;
 - (g) the acquisition by any of the Company's competitors of an interest of any kind in the ownership of the Supplier, or the involvement of any of the Company's competitors in the management or control of the Supplier;
 - (h) a material change in the Supplier's management;
 - (i) insolvency or suspension of payments by the Supplier's bankers or appointment of a receiver of any part of the Supplier's undertaking, assets or income; or
 - (j) disasters or other events which may make it difficult for the Supplier to have available products to meet purchase orders for the Products which the Company may place under this Agreement.
35. The Company may enter the Supplier's premises during business hours on giving a minimum of one day's notice to inspect any raw materials, manufacturing process, packaging, batching, recording or transport facilities or motor vehicles used in forming, manufacturing, handling, packaging or transporting the Products or providing the Services, and to inspect the Supplier's records to verify compliance with this Agreement.
36. The Supplier shall not sub-contract or otherwise arrange for another person to perform any part of this Agreement or to discharge any of its obligations under any part of this Agreement without the prior written consent of the Company. If the Company consents to a sub-contract, the Supplier shall not be relieved of any of its liabilities or obligations under this Agreement and the Supplier shall be liable to the Company for the acts, defaults and neglects of any sub-contractor or any employee or agent of the sub-contractor as if they were the acts, defaults or neglects of the Supplier or the employees or agents of the Supplier.
37. Unless the parties specifically agree to the contrary in writing, the prices for the Products include delivery, all taxes imposed on the Supplier, all importation costs including but not limited to customs duty and related customs charges, freight forwarding costs, inland charges, ocean and or air freight costs, quarantine charges, fumigation fees, tail gate fees, bond store and terminal storage fees and an associated agency fees.
38. If any of these terms are held to be invalid, void, unenforceable or illegal for any reason, this Agreement will otherwise remain in full force and effect apart from such provisions which will be deemed deleted or modified to overcome that objection.

Executed as an Agreement:

Signed for and on behalf of Intercast & Forge Pty Ltd

Signatory's Name: _____

Title: _____

Date: _____

Signed for and on behalf of the Supplier

Supplier Name: _____

Signatory's Name: _____

Title: _____

Date: _____