

## Purchase Terms and Conditions (Terms)

### Avem Quirks Pty Ltd (Company)

#### 1. Application

1.1. These Terms in their present form or as varied together with:

- a) any accepted application for opening of a credit account;
- b) all Quotations (as defined in clause 2.1);
- c) all product warranties provided by the Company;
- d) all accepted orders placed by you (**Buyer**) with the Company for the Company's products or services; and
- e) any variation to a document listed in a) to d) above agreed to in writing by the Buyer and the Company

form the contract (**Contract**) between the Company and the Buyer pursuant to which the Company makes all supplies of the Company's products and services to the Buyer.

1.2. The application of these Terms to any order or other arrangement by the Company to supply products or services to the Buyer may only be varied by agreement in writing between the Buyer and Company.

1.3. For the avoidance of doubt, variations to these Terms, or other terms offered by the Buyer and contained in any purchase order or other document issued by the Buyer which differ from these Terms, are only incorporated into any contract for the supply of products or services by the Company to the Buyer if accepted by the Company in writing. Delivery of products or services by the Company will not be deemed acceptance of any such additional or varied terms issued by the Buyer.

#### 2. Quotations

2.1. Offers, estimates or quotations (**Quotations**) given by the Company are, except to the extent otherwise stated in such document, subject to these Terms.

2.2. Any Quotation from the Company:

- a) will not bind the Company or form part of the Contract unless given, or subsequently confirmed, in writing by it and accepted by the Buyer through placement of an order;
- b) will remain open for acceptance for a maximum period of 20 days, unless otherwise specified in the Quotation;
- c) will make no allowance for the removal or existing equipment unless specifically stated otherwise; and
- d) may be subject to alteration at any time prior to the Company accepting an order from the Buyer.

#### 3. Orders

3.1. An order placed by the Buyer will only form part of the Contract when it has been received and accepted by the Company.

3.2. Acceptance by the Company of any order issued by the Buyer may be in writing or by the Company delivering to the Buyer the products or services which are the subject of an order.

3.3. Any terms and conditions contained in any order or other document issued by the Buyer will not form part of the Contract unless they are expressly signed and accepted by the Company's authorised representative.

3.4. Orders once accepted cannot be cancelled or varied without the Company's written consent.

3.5. Supply of products or services by the Company does not create any obligation on the Company to supply the products or services to the Buyer on a continuing basis or at any time in the future.

3.6. Except as otherwise agreed in writing, the Company reserves the right at any time and without notice to impose a limit on the number of products the Buyer may purchase.

#### 4. Prices

- 4.1. Except where an order is placed for products or services under a valid and binding Quotation under clause 2.2 or to the extent otherwise agreed, the Company reserves the right at any time prior to accepting an order to vary with notice to the Buyer the price of the products or services.
- 4.2. Notwithstanding that an order is placed under a valid and binding Quotation, except to the extent otherwise stated in the Quotation, the Company reserves the right prior to acceptance of such order and with notice to the Buyer to add to the quoted price any additional cost incurred by the Company as a result of:
  - a) any agreed change to order quantities;
  - b) any relevant increase in exchange rates, costs of labour, parts, materials and other inputs, including, without limitation, energy and other overheads; and
  - c) any agreed change to the services or products to be provided.
- 4.3. We reserve the right to amend any discount structure applying to the Buyer's account any time, without notice
- 4.4. Each amount quoted by the Company is the goods and services tax (**GST**) exclusive amount, unless specifically described as 'GST inclusive'.

#### 5. GST

- 5.1. Words or expressions used in this clause 5 which are defined in the A New Tax System, (Goods and Services Tax) Act 1999 (Cth) have the same meaning in this clause.
- 5.2. Despite any other clause in these Terms, if a party makes a supply (**Supplier**) under or in connection with the Contract on which GST is payable (not being a supply the consideration for which is specifically described as 'GST inclusive'):
  - a) the consideration payable or to be provided for that supply but for the application of this clause (GST exclusive consideration) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST exclusive consideration multiplied by the prevailing rate of GST (**GST Amount**); and
  - b) subject to clauses 5.3 and 13.2, the GST Amount must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.
- 5.3. The Recipient need not pay the GST Amount in respect of a taxable supply made under or in connection with the Contract until the Supplier has given the Recipient a tax invoice in respect of that taxable supply.

#### 6. Payment terms

- 6.1. The Buyer must pay all invoices. If the Buyer has an approved credit account with the Company, the products and/or services supplied by the Company must be paid for within twenty (20) days of the date of the invoice. Where the Buyer is overdue with any payment, the Company reserves the right to change the Buyer to a COD account, in which case the Buyer will pay for all products and services before they are supplied.
- 6.2. All payments will be made in the currency specified in the invoice without deduction or set-off of any kind.
- 6.3. Time of payment is of the essence of the Contract. Without prejudice to any other remedy, The Company may charge interest on any overdue payments at an annual rate of 2.5% (to accrue from day to day).
- 6.4. All unpaid balances owing to the Company by the Buyer in the circumstances described in clause 17.3 will become a debt immediately due and payable to the Company despite any other provision of these Conditions.
- 6.5. The Buyer will and hereby does indemnify the Company on demand against all costs, charges, expenses and legal costs (on a solicitor-client basis) incurred by the Company in recovering sums owed by the Buyer including the commission, if any, charged by a mercantile agent.
- 6.6. A certificate signed by a manager of the Company as to the amount of a debt owed by the Buyer to the Company will be prima facie evidence of the amount of that debt.

## **7. Delivery and Risk**

- 7.1. Risk in the products will pass to the Buyer upon the products being collected by the Buyer or when delivered to the place nominated by the Buyer for delivery.
- 7.2. The Company gives and accepts delivery dated in a Quotation in good faith but does not guarantee those dates. The Company will not be liable to the Buyer for any loss or damage whatsoever should the Company be delayed or prevented from delivery products, supplying services or otherwise performing any of its contractual obligations due to any cause or circumstance of any kind whatsoever. Delay in delivery or any other default in respect of a delivery will not relieve the Buyer of any obligation in respect of any other delivery.
- 7.3. The Company reserves the right to make deliveries under these Terms in instalments and the Contract will be severable as to such instalments. All such instalments, when separately invoiced, will be paid for by the Buyer without regard to the delivery of subsequent instalments.
- 7.4. Subject to clause 7.2, delivery dates cannot be varied by the Buyer once they have been agreed without the prior written consent of an authorised representative of the Company.
- 7.5. The contents (product) risk and insurance responsibility remains at all times with the Buyer.

## **8. Sub-contracting**

- 8.1. The Company may sub-contract all or part of its obligations under a Contract to a third party without the consent of the Buyer.

## **9. Retention of title**

- 9.1. The Company will retain title in products supplied to the Buyer until the Company has received payment in full for the products and all other products and services supplied by the Company to the Buyer. The AQ Box provides a gateway to the AQ portal. The AQ box remains the property of Avem Pty Ltd trading as Avem Quirks.
- 9.2. Until title passes under clause 9.1:
  - a) the Buyer will hold the products as fiduciary for the Company (in which full title to such products will remain);
  - b) the Buyer will keep the products insured against all usual risks to full replacement value. The Buyer will hold on trust for the Company in a separate bank account any insurance monies received by the Buyer for products owned by the Company;
  - c) the Buyer will store each delivery of products separately, clearly identified as the Company's property and in a manner to enable them to be identified and cross-referenced to particular invoices where reasonably possible;
  - d) the Buyer will not pledge or allow any lien, charge or other security interest (as defined in clause 10) to arise over the products; and
  - e) the Buyer may use or sell the products in the ordinary course of business, provided that the Buyer will be agent for the Company in any sale if the products are sold. The Buyer must account to the Company for the proceeds of any such sale and will hold these proceeds in a separate bank account on trust for the Company. However, any such agency will only extend to the obligation to account for proceeds. The Company will not be bound by any contract between the Buyer and the Buyer's purchaser.
- 9.3. The Company's rights as an unpaid seller will not be affected by the Company retaining title to the products supplied until the products have been paid for in full by the Buyer.
- 9.4. Where the Buyer has not fully paid the Company for products and the Buyer enters into bankruptcy, liquidation, a composition with its creditors, has a receiver or manager appointed over all or any part of its assets, enters into administration or becomes insolvent:
  - a) the Buyer may not sell, use or part with possession of the products; and
  - b) the Company will be entitled, without prejudice to the Company's other remedies, to recover and repossess such products and to enter any premises without notice for this purpose.

## 10. Personal Property Securities Register

- 10.1. The Buyer acknowledges and agrees that:
- a) the Contract constitutes a security agreement;
  - b) in accordance with clause 10 of these Terms, it grants to the Company a security interest (as defined in the Personal Property Securities Act 2009 (Cth) (**PPSA**) in all products supplied by the Company and the proceeds thereof as security for payment of the purchase price of the products and services and all other moneys payable to the Company by the Buyer;
  - c) the Company may apply to register and register any security interests created under the Contract on public registers including the Personal Property Securities Register (as defined in the PPSA) (PPSR) at any time before or after delivery of the products by the Company;
  - d) the Company may use and/or disclose any information provided by the Buyer to register any security interest on public registers. Such disclosure is only authorised to the extent necessary in connection with an exercise of rights under the Contract or a transfer or other dealing with rights or obligations under the Contract, or to officers, employees, agent, contractors, legal and other advisors and auditors of the Company, or in accordance with the consent of the Buyer (not to be unreasonably withheld) or as required by any law (other than section 275(1) of the PPSA unless section 275(7) of the PPSA applies) or as required by any stock exchange or rating agency;
  - e) it will do anything that the Company requires and will promptly give the Company all assistance and information (including signing any documents) as the Company requests to ensure that the Company has a perfected first ranking security interest in all products supplied by the Company to the Buyer (and the proceeds thereof);
  - f) the Company need not give the Buyer any notice unless such notice is required by the PPSA and cannot be excluded;
  - g) if Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interest created under this Contract, the following provisions of the PPSA do not apply: section 95; subsection 121(4); section 130; paragraph 132(3)(d); subsection 132(4); section 135; section 142; and section 143;
  - h) it will not change its name without notifying the Company in writing at least 10 business days prior to doing so; and
  - i) it must indemnify the Company for any costs incurred by the Company under this clause.
- 10.2. The Buyer and the Company agree that, without limiting the rights of the Company under clause 8.3, they will not disclose any of the information set out in section 275(1) of the PPSA in relation to any security interest created under the Contract to any person (except that the Company may do so where required due to the operation of section 275(7) of the PPSA).

## 11. Intellectual Property

- 11.1. All intellectual property rights in or relating to products or services supplied by the Company, including in relation to the development, manufacture, use, operation, repair or maintenance of the products, and in or in relation to any Company- licensed, commissioned or created tooling, materials, drawings, samples, reports, work results and other documents, remains at all times the sole and exclusive property of the Company or its licensor.

## 12. Use of Portal

- 12.1. The Company's online portals are used to manage and record information pertaining to the operation of products for performance and pre-emptive servicing requirements.
- 12.2. All information collected by the Company may be made available to the Buyer with any valid subscription/membership.

- 12.3. A valid subscription/membership grants the Buyer a revocable non assignable licence to use the Company's portals.
- 12.4. The Company may charge a fee for any access, supply of information from time to time. The Company may vary this fee without notice to the Buyer.
- 12.5. The data collected from products purchased by the Buyer remains the property of the Buyer. However, the Buyer grants the Company an irrevocable licence to use this data.
- 12.6. The Company's portals must be used in accordance with its policies or procedures.
- 12.7. Any perceived corruption or perceived corruption must be reported to us on 1800 658 120 immediately.

### **13. Set Off**

- 13.1. The parties agree that the account between the Company and the Buyer is a running account.
- 13.2. Where any amount is payable by the Company to the Buyer under the Contract, including an amount owing by way of rebate, the Company may set such amount off against any amount owed to the Company or to a Related Company by the Buyer, and continue to do so until such time as the amount outstanding from the Buyer has been paid in full.

### **14. Privacy**

- 14.1. Any personal information submitted by the Buyer to the Company is subject to and will be handled in accordance with the Company's privacy policy. The privacy policy forms part of these Terms and is available on the Company's website.

### **15. Express Warranty**

- 15.1. The Company warrants to the Buyer that products or services sold by the Company to the Buyer conform to the agreed specifications (subject to clause 15.3) and are free from material faults and defects (subject to clause 15.2).
- 15.2. The warranty that products are free from material faults and defects will not apply to the extent any defect cannot be discovered due to the state of scientific or technical knowledge or has been disclosed as a feature or limitation of the products in any product specifications.
- 15.3. With the exception of any products that may have been sold by the Company to the Buyer by description or sample, the Company does not warrant that the products will conform to that description or sample and products will be accepted by the Buyer even though alterations in design or construction have been introduced by the Company between the date of the description or provision of the sample and delivery of the product to the Buyer.
- 15.4. The Company assumes a warranty of fitness for a particular purpose with respect to a product supplied by it only if such particular purpose has been expressly stated in writing by the Buyer, and the Company has expressly accepted a warranty of fitness for such purpose.
- 15.5. The duration (and any other details) of the express warranties referred to in this clause will be agreed upon a product-specific basis.
- 15.6. Unless otherwise agreed by the Company in writing, the express warranties in this clause will apply:
  - a) in the case of products: as specified in the Quotation for the supply of such product to the Buyer, or if no warranty period is so specified, for a period of 6 months, from the date of delivery of the products to the Buyer. However, in no case will these express warranties to the Buyer extend beyond the date the Buyer sells or otherwise disposes of the product; or
  - b) in the case of services, as specified in the Quotation for the supply of such services, or if no warranty period is specified for a period of 6 months after delivery of the services.
- 15.7. Claims under the express warranties provided under this clause 15 may be made by contacting the Company within 7 days of such claim arising. Repair or replacement will not extend nor renew the warranty period.
- 15.8. Availability of service personnel for warranty repairs is restricted to normal working hours of 8:30am and 5:00pm, Monday to Friday and excludes Public Holidays. Service work outside these hours will be at the Buyer's expense except when authorised by the Company prior to the commencement of service work.
- 15.9. This warranty does not extend to travel costs incurred beyond 350KM from any major metro GPO. The Buyer will be liable for the additional travel costs incurred beyond the 350KM.

- 15.10. The express warranties in relation to products under this clause 15 will not apply to a defect in the product to the extent to which it arises:
- a) due to power surges;
  - b) due to storage, handling or installation of the products otherwise than in accordance with instructions provided for the products by the Company or without reasonable care;
  - c) due to operation, use or maintenance of the products otherwise than in accordance with instructions provided for the products by the Company or without reasonable care;
  - d) due to repairs, alterations or modifications to the products which have been performed by a third party not authorised by the Company, or due to the use of any spare parts not manufactured, sold or approved by the Company in connection with repairs, alterations or modifications of the products, which occurred without authorisation of the Company;
  - e) due to accidental damage or to use of the products for a purpose or in environmental conditions for which the products were not designed or sold or use of the product outside the specified or normal operating ranges for such products;
  - f) as a result of changes which occur in the condition or operational qualities of the products due to climate or other environmental influence, foreign material contamination or water entry;
  - g) from normal wear and tear or when replacement or repair of parts would be part of normal maintenance or service of the products (such as in the case of globes and glassware, gaskets, fuses, batteries, other external plastic components, and similar parts or re-gassing of compressors) or where the damage is only to surface coating, varnish and enamel;
  - h) nor will the express warranties in relation to products under this clause 12 apply in cases where the products suffer damage caused by continued use of the products after it is known they are defective.

## 16. Limitation of Liability

- 16.1. Subject to clause 16.2 to the extent permitted by law, all terms, conditions, warranties and representations that might otherwise be granted or implied by law, are hereby expressly excluded.
- 16.2. The Company does not exclude, restrict or modify any liability that cannot be excluded, restricted or modified, or which cannot be excluded, restricted or modified except to a limited extent, as between the Company and the Buyer by law including liability under the Competition and Consumer Act 2010 (Cth). However, where such statutory provisions apply, to the extent to which the Company is entitled to do so, the Company's liability will be limited at its option to:
- i) in the case of a supply of products:
    - i. the replacement of the products or supply of equivalent products;
    - ii. the payment of the cost of replacing the products or acquiring equivalent products;
    - iii. the payment of the cost of having the product repaired; or
    - iv. the repair of the products; and
  - j) in the case of Services:
    - i. the supply of the Services again; or
    - ii. the payment of the cost of having the Services supplied again.

- 16.3. To the extent permitted by law and subject only to any express exceptions contained in these Terms, the Company will under no circumstances be liable in any way whatsoever to the Buyer for any form of loss, damage or expense sustained or incurred by the Buyer or any other party in consequence of or resulting directly or indirectly out of the supply of the products or services by the Company, the use or performance thereof, where the products are installed by a third party engaged by the Buyer any failure to install the products in accordance with their applicable installation instructions and manuals provided with the products or to operate the products in accordance with their applicable operation instructions and manuals provided with the products, any breach by the Company of any Contract incorporating these Terms, or the negligence of The Company, or the negligence of the Buyer or any third party including in relation to the installation or operation of the products. In particular, the Company is not liable in any circumstances whatsoever (including any fault or default of the Company) for any indirect or consequential losses (including loss of goodwill, loss of stock, loss of business or anticipated savings), loss of profits or use, any rectification costs or any third party claims (subject to clause 16.2), in connection with the products, services or the Contract.
- 16.4. If the Buyer is a consumer as the term is defined under the Australian Consumer Law, then the following consumer guarantee applies:
- 16.5. Our 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 for compensation for any other reasonably foreseeable loss or 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.
- 16.6. In clause 16.5 the terms "You" and "Our" may be interchanged with "Buyer" and "the Company" respectively.

## **17. Termination and variation**

- 17.1. The Buyer may return unused products supplied within thirty (30) days of delivery, provided the following conditions are satisfied:
  - a) the written approval of an authorised employee of the Company has first been obtained and the Invoice number and date have been quoted for reference;
  - b) the products are returned in their original condition; and
- 17.2. the Buyer agrees to pay to the Company a restocking charge of twenty per cent (20%) of the price paid or payable for the products.
- 17.3. The Buyer may terminate in whole or in part any Contract for the supply of products and/or services before the supply has been made, provided the following conditions are satisfied:
  - a) the written approval of an authorised employee of the Company has first been obtained; and
  - b) the Buyer agrees to pay any cancellation charge, being a genuine pre- estimate of the Company's loss, as determined and specified by the Company.
- 17.4. The Company reserves the right immediately to terminate or suspend the Company's performance of the whole or any outstanding part of any Contract for the supply of products and/or services without incurring any liability to the Buyer in any of the following circumstances:
  - a) the Buyer fails to take delivery of or to pay for products and/or services by the due date or otherwise breaches any other term of the Contract;
  - b) the Buyer enters into bankruptcy, liquidation or a composition with its creditors, has a receiver or manager appointed over all or any part of its assets, enters into administration or becomes insolvent;
  - c) The Company notifies the Buyer of having reasonable grounds for suspecting that an event in clause 10.3(b) has occurred or will occur, or that the Buyer will not pay for products and/or services on the due date;

- d) there has been a substantial increase in the Company's costs of manufacture and supply of products and/or services between the date of the Contract and the date of delivery or despatch arising from circumstances beyond the Company's reasonable control where the Contract is for a fixed price and the Company and the Buyer have failed to reach agreement on a reasonable adjustment in the price for remaining deliveries to recognise such increase within thirty (30) days of the Company notifying the Buyer of such increase; or
  - e) contractual performance by either the Company or the Buyer is delayed or prevented due to any Force Majeure Event.
- 17.5. Termination by the Company under clause 17.3 or 17.5 will be without prejudice to the Company's other remedies and the Company's right to recover payment from the Buyer for any products and/or services provided by the Company including those previously provided by the Company.
- 17.6. The Company may terminate this agreement by giving one month's written notice to the Buyer.
- 17.7. The Company may give notice to the Buyer varying these Terms. The Terms so varied apply to any Order made by the Buyer after the Company has given notice of the variation.

## 18. General

- 18.1. All clerical errors are subject to correction and will not bind the Company.
- 18.2. Notice under these Terms may be given by email.
- 18.3. No employee of the Company is authorised to bind the Company unless the Company has given the Buyer express written notice to that effect.
- 18.4. The invalidity or unenforceability of any provision of these Conditions will not affect the validity or enforceability of the remaining provisions.
- 18.5. The Company's failure to enforce at any time, or for any period of time, any term of any Contract incorporating these Conditions, will not constitute a waiver of such term and will in no way affect the Company's right later to enforce the Contract.
- 18.6. Headings are included for ease of reference and do not form part of or affect the interpretation of these Conditions.
- 18.7. Subject to clauses 8.1 and 18.8, neither party will, without the other party's prior written approval, assign a Contract or any payment or any other right, benefit or interest thereunder.
- 18.8. The Company may, without the Buyer's consent, assign or novate a Contract or any payment or any other right, benefit or interest thereunder to any entity which is owned or controlled by the Company or a related body corporate (as that term is defined in the Corporations Act 2001 (Cth)) of the Company.
- 18.9. These Terms bind the Company, the Buyer and their respective successors and permitted assigns.
- 18.10. A reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute.