

1 Definitions

1.1 In these terms and conditions:

- (1) "Purchaser" means the entity purchasing the goods upon these terms and conditions.
- (2) "Seller" means Brain Industries (International) Pty Ltd and any related body corporate of the Seller within the meaning of section 50 of the Corporations Act 2001.
- (3) Unless the context otherwise requires, the singular shall include the plural and vice versa.

2 Terms

2.1 The only terms which are binding upon the Seller are:

- (1) those set out in these terms and conditions or otherwise agreed to in writing by the Seller; and
- (2) those, if any, which are imposed by law and which cannot be excluded.

3 Prices

3.1 The quotation or price list of the Seller is not an offer to sell but is an invitation to treat only and the Seller reserves the right to accept or reject in its absolute discretion any orders which may be received by it.

3.2 The prices shown in the quotation are based upon conditions prevailing at the time the quotation is made. The Seller will, subject to any major changes in conditions, such as currency fluctuations, changes in law and statutory regulations, increases in labour cost through wages paid or taxation, increase in duties, importation fees or material costs, hold a price quoted for sixty (60) days from the date of the quotation.

3.3 The price at which the goods are sold does not (unless otherwise stated or agreed in writing) include sales tax, GST or other governmental taxes, customs or statutory duties. Should any of these taxes, or any other tax, be levied or imposed by the Commonwealth of Australia or State Governments in conjunction with this sale, then the Purchaser shall promptly pay all taxes so levied or imposed for the supply of goods and services in accordance with the legislation.

3.4 The Seller shall have the right to revise the unit and total pricing of a quotation if the quantities set out in the Purchaser's Purchase Order are varied.

3.5 In the event that prior to the delivery of any goods the Seller finds that the cost of manufacture for any reason whatsoever has become so great that it cannot deliver the goods ordered at the price quoted it shall have the right to increase the quoted price upon giving fourteen (14) days written notice of such increase to the Purchaser. In that event, the Purchaser shall within seven (7) days of receiving such notice notify the Seller in writing whether or not it will purchase the goods ordered at the increased price. In the event that the Purchaser refuses to pay the increased price this agreement shall cease and determine and neither party shall be liable to the other hereafter.

3.6 Prices quoted exclude delivery, installation cost or charges unless otherwise specified.

3.7 Prices quoted exclude maintenance and service charges unless otherwise specified.

4 Delivery

4.1 All prices quoted are F.O.B. at the Seller's premises unless otherwise stated.

4.2 Where a place of delivery other than at the Seller's premises is specified in writing, the Purchaser must pay the costs of transportation of the goods to the place of delivery, at the same time as, and in addition to, the price (unless the Seller quotes a price inclusive of delivery).

4.3 If a delivery date is specified that date is an estimate only and the Seller is not liable for any delay in delivery or for any costs or losses which the Purchaser incurs as a result from any delay.

4.4 If the Seller is unable to supply the Purchaser's total order these terms and conditions continue to apply to the goods supplied.

4.5 If by reason of any act by the Purchaser, the Seller is unable to deliver the goods within fourteen (14) days after notification that the goods are ready for delivery or attempted delivery of the goods, delivery to the Purchaser shall be deemed to have been effected and the goods shall thereafter be at the Purchaser's risk. Storage charges shall thereafter be to the account of the Purchaser.

5 Acceptance and Exclusion of Implied Conditions and Warranties

5.1 The Purchaser must inspect the goods immediately upon delivery and must within 7 days after the date of inspection give written notice to the Seller, with particulars, of any claim in writing that the goods are not in accordance with the order. If the Purchaser fails to give that notice, then to the extent permitted by statute the goods are deemed to have been accepted by the Purchaser and the Purchaser must pay for the goods in accordance with the provisions of these terms and conditions.

5.2 All statutory or implied conditions and warranties which are binding on the Seller are excluded to the extent permitted by law unless otherwise agreed.

5.3 To the extent permitted by law, liability of the Seller under any condition or warranty which cannot be legally excluded is limited to, at the option of the seller:

- (1) in the case of goods supplied to the Purchaser:
 - (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, excluding demurrage; and
- (2) in the case of services provided to the Purchaser (including the delivery of the goods referred to above):
 - (a) supplying the services again; or
 - (b) paying the cost of having the services supplied, excluding demurrage, again.
- (3) Repairs undertaken by parties other than the Seller can only be done by such persons when authorised by the Seller in writing to do so.

5.4 Except to the extent provided in clause 5.3, the Seller shall have no liability (including liability in negligence) to any person for any loss or damage consequential or otherwise howsoever suffered or incurred by any person in relation to the goods or the delivery of those goods and without limiting the generality thereof, in particular any loss of any kind or damage consequential or otherwise suffered or incurred by any such person caused or resulting directly or indirectly from:

- (1) any failure, defect or deficiency of whatsoever nature or kind in the goods; or
- (2) any act or omission of the Seller, its employees, agents or subcontractors whether amounting to negligence, wrongdoing or otherwise.

5.5 Any technical advice provided by the Seller at any time with regard to the use of its goods or services is furnished on the basis that it represents its best judgement under known circumstances, but the Seller at any time does not make any warranty, expressed or implied in relation to such technical advice which if used or relied upon by the Purchase shall be at its sole risk.

5.6 A product-specific warranty period applies from the date of delivery, limited to faulty workmanship performed by the Seller, as follows unless otherwise agreed in writing by the Seller:

- (i) Natural and FRAS Rubber Lagging Products – 3 Months
- (ii) Polyurethane and Ceramic Products – 6 Months
- (iii) Engineered Pulleys – 12 Months from commissioning or 18 months from delivery, whichever is sooner. Warranty is limited to repair or replacement of the product only and specifically excludes consequential damages of any kind, personal injury, loss of profits, wear of shells or lagging, bearings because of bearing B10 Parameters, costs of removing or replacing Pulleys from the conveyor, damage caused by improper use or overloading of the Pulley, or not maintaining the Pulley in accordance with the Seller's maintenance manual or normal good

practice.

(iv) Refurbished/Overhauled Products – 3 Months

(v) All other products – 12 Months

5.7 Any notification of a claim must be made in writing. The Seller undertakes to rectify any warrantable problem promptly and must agree in writing to accept costs incurred by third parties associated with any rectification prior to any remedial works starting, otherwise the Seller will not be responsible for such costs.

5.8 Brain Industries shall be relieved of all obligation and liabilities under this warrant if:

- (1) The goods are operated with any accessory equipment or part not specifically approved by it unless the Purchaser furnishes reasonable evidence that such installation was not the cause of the defect.
- (2) The goods are not operated or maintained in accordance with the instruction provided by the Seller unless the Purchaser furnishes evidence that such operation or maintenance was not a cause of the defect.
- (3) The goods have been repaired, altered or modified without the Seller's approval unless the Purchaser furnishes reasonable evidence that such repair, alteration or modification was not a cause of the defect PROVIDED THAT this limitation insofar as it relates to repairs, shall not be applicable to routine repairs or replacements which normally occur in the operation of the goods if such repairs or replacements are made with suitable materials and according to standard practice engineering.

5.9 Risk of loss, damage to, or destruction of equipment, materials or parts supplied by the Purchaser however caused whilst on the Seller's premises, shall be the responsibility of and borne by the Purchaser.

5.10 Where material is supplied by the Purchaser, the Seller will not replace such material damaged or in any way rendered unsuitable due to faulty workmanship by the Seller.

5.11 Goods subject to a possible warranty claim must be returned at the Purchaser's expense to the Seller's premises. Return packaging and delivery shall be at the Purchaser's expense.

6 Payment

6.1 Unless the Purchaser has an approved credit facility, payment for all goods and services must be made in full in cash or by EFT before the goods or services are dispatched. Where a credit facility has been approved payment for goods sold by the Seller to the Purchaser must be made no later than 30 days from end of month from the invoice date.

6.2 Time is of the essence in respect of the Purchaser's obligation to make payment for goods sold by the Seller to the Purchaser.

6.3 If the Purchaser defaults in making payment to the Seller in accordance with these terms and conditions the Seller may in its absolute discretion:

- (1) charge the Purchaser interest calculated on the portion of the Purchaser's account overdue at the rate of 2% per month from the date on which the default arose; and
- (2) require the Purchaser to reimburse the Seller for all collection costs including legal costs incurred by the Seller calculated on a solicitor and client basis as a consequence of the Seller instructing its solicitor to provide advice to it in connection with the default and/or to institute such recovery process as the Seller in its discretion decides.

6.4 Any payments made by the Purchaser to the Seller may be applied as follows:

- (1) first as reimbursement for any collection costs incurred by the Seller in accordance with clause 6.3(2);
- (2) secondly, in payment of any interest charged to the Purchaser in accordance with clause 6.3(1);
- (3) thirdly, in satisfaction or part satisfaction of the oldest portion of the Purchaser's account.

7 Default

7.1 In the event that the Purchaser makes any default in the payment for any goods or services ordered or calls a meeting of creditors or becomes insolvent or subject to the laws of bankruptcy or being a company calls a meeting for the purpose of or goes into liquidation or has a winding up petition presented against it or has a receiver appointed or execution levied, the Seller may at its option and notwithstanding any waiver of any default or failure and without prejudice to any other rights it may have against the Purchaser, suspend or cancel any agreement to provide or sell goods or services to such Purchaser or require payment in advance of delivery of any goods or service notwithstanding the terms of payments specified, or may cancel any undelivered or incomplete portion of any order or may take over any goods or any part thereof supplied or ordered and dispose of them in its own interest without prejudice to any claim the Seller may have for damages for any loss resulting from such resale. In such an event, the Seller has the right to retrieve from the Purchaser any goods that are owned by the Seller.

8 Risk and Insurance

8.1 Goods supplied by the Seller to the Purchaser are at the Purchaser's risk immediately on delivery to the Purchaser or into the Purchaser's custody (whichever is the sooner).

9 Retention of Title

9.1 The Purchaser agrees that the property in the goods does not pass to the Purchaser until the price of such goods and all other goods and services supplied by the Seller to the Purchaser is paid in full to the Seller and until such time the Purchaser holds the goods as the fiduciary agent and bailee of the Seller.

Where the Purchaser does not make payment in respect of specific goods, payment must be treated as having been made first in respect of goods which have passed out of the possession of the Purchaser, and then in respect of whatever goods still in the possession of the Purchaser, the Seller elects.

9.2 Purchaser's Obligations until Paid For

Until the goods have been paid for in full:

- (1) the Purchaser must store the goods in such manner as to show clearly that they are the property of the Seller; and
- (2) the Purchaser may sell the goods, in the ordinary course of its business, as agent and in a fiduciary capacity for the Seller and must account to the Seller for the proceeds (including any proceeds from insurance claims) which must be kept in a separate bank account.
- (3) In the event that the Purchaser sells the goods to its customers or mixes the goods with other goods for sale to its customers then the Purchaser shall hold the proceeds of such sale, or where the goods are intermixed such part of the proceeds of such sales as relate to the intermixed goods, on trust for the Seller. Such proceeds held on trust for the Seller shall be deemed to equal in dollar terms the amount owing by the Purchaser to the Seller at the time of the receipt of such proceeds.
- (4) The Purchaser shall not assign or deal with any proceeds from the sale of goods or the intermixed goods, including without limiting the generality of the foregoing, assigning or dealing with all or any book debts arising upon the sale of the goods or intermixed goods prior to the receipt by the Seller of payment for same

9.3 The Purchaser irrevocably authorises the Seller at any time, to enter any premises:

- (1) upon which the Seller's goods are stored to enable the Seller:
 - (a) to inspect the goods; and/or
 - (b) if the Purchaser has breached the contract, to reclaim possession of the goods; and
- (2) upon which the Purchaser's records pertaining to the goods are held to inspect and copy

the records.

9.4 The provisions of this clause 9 apply despite any arrangement between the parties under which the Seller grants the Purchaser credit. PROVIDED THAT where the Seller grants the Purchaser credit for a specific period the credit period is for that period or until the re-sale of the goods by the Purchaser, whichever is the earlier after which time the Seller may exercise all of its rights pursuant to this clause 9.

10. PPSA

10.1 For the purposes of this clause PPSA means the *Personal Property Securities Act 2009* (Cth) and all terms used herein have the same meaning as set out in that Act unless otherwise defined. The Purchaser acknowledges and agrees that the Purchaser grants the Seller a Security Interest in the goods and their Proceeds.

10.2 The Purchaser agrees that:

- (1) these terms and conditions of sale are subject to the Seller giving the Purchaser at least 30 days notice, of such other terms and conditions as the Seller may adopt from time to time and apply to the supply of the goods by the Seller to the Purchaser to the exclusion of all other terms and conditions of sale;
- (2) no variation to our terms and conditions of sale will be of any effect unless agreed to by the Seller in writing;
- (3) this agreement is a security interest for the purposes of the PPSA;
- (4) the Seller is entitled to register its security interest in the goods and their proceeds as a purchase money security interest;
- (5) it will not register a Financing Change Statement in respect of a Security Interest contemplated or constituted by this Agreement without the Seller's prior written consent;
- (6) it will not register or permit to be registered a Financing Statement or Financing Change Statement in relation to the goods in favour of a third party without the Seller's prior written consent;
- (7) that the goods sold under this Agreement are collateral for the purposes of the PPSA;
- (8) it will do all the things necessary including providing all information we require to register a Financing Statement or Financing Change Statement (as defined under the PPSA) on the PPS Register ('PPSR') as a Security Interest pursuant to the PPSA;
- (9) it will not change its name, ACN or ABN or other details required on the PPSR, without first notifying the Seller;
- (10) it waives its rights to receive a verification statement in respect of any Financing Statement or Financing Change Statement in respect of the Security Interest created pursuant to these terms and conditions;
- (11) it must pay our costs of any discharge or necessary amendment of any Financing Statement or Financing Change Statement;
- (12) unless otherwise agreed in writing the parties hereto agree not to disclose information of the kind referred to in section 275(1) of the PPSA to any interested person, or any other person requested by an interested person and the Purchaser waives any right it may have but for this clause under section 275(7)(c) of the PPSA to authorise the disclosure of the above information; and
- (13) in the event that no Sale Agreement is executed by the Purchaser, the delivery and use of the goods by the Purchaser shall constitute adoption or acceptance by the Purchaser of the terms and conditions set out in the proposed Sale Agreement.

10.3

- (1) The Purchaser consents to the Seller affecting and maintaining a registration on the Register (in any manner it considers appropriate) in relation to any Security Interest contemplated or constituted by this Sale Agreement in the goods and the proceeds arising in respect of any dealing in the goods hereby sold.
- (2) The Purchaser agrees to sign any documents and provide all assistance and information to the Seller required to facilitate the registration and maintenance of any Security Interest.

11. Contracting Out

11.1 Section 115(1) of the PSSA allows for the contracting out of provisions of the PPSA and to the maximum extent permitted by law, the Purchaser agrees that the following sections of the PPSA will not apply: Sections 95, 96, 118, 121, 125, 130, 132, 135, 142 and 143.

11.2 Section 115(7) of the PSSA allows for the contracting out of provisions of the PPSA and to the maximum extent permitted by law, the Purchaser waives any rights the Purchaser may have pursuant to, and hereby contract out of the following sections of the PPSA: Sections 127, 129(2) and (3), 130(1), 132, 134(2), 135, 136(3), (4) and (5) and 137.

12. Force Majeure

12.1 If a party is prevented from or delayed in complying with an obligation (other than to pay money) by an event beyond its reasonable control, performance by it of that obligation is suspended during the time, but only to the extent that, compliance is prevented or delayed.

13. Entire Understanding

13.1 These terms and conditions:

- (1) contain the entire agreement and understanding between the Seller and the Purchaser on everything connected with the subject matter of these terms and conditions; and
- (2) supersede any prior agreement or understanding on anything connected with that subject matter.

13.2 The Seller and the Purchaser have entered into these terms and conditions without relying on any representation by the other or any servant or agent of the other.

14. Export

14.1 If any goods sold hereunder is for export, the Purchaser shall be responsible for arranging transportation, insurance, and other export duties, clearances, and payment of associated costs, unless the Seller quotes a price inclusive of such costs.

15. Technical Information

15.1 Unless otherwise specified in writing, should any conflict exist or arise between the requirements of (a) any drawing(s), (b) any specification(s) and sample(s) furnished by the Purchaser in respect of the goods to be manufactured by the Seller, the requirements of the drawings shall prevail, however in the case of supplied electronic C.A.D. data, then this will prevail over hard copy drawings.

15.2 Drawings, illustrations, specifications and any other technical information or material accompanying a quotation shall remain the property of the Seller and shall be returned to it within (7) seven days upon request. Such materials shall not be copied or placed in the hands of any third party without the Seller's written consent.

16. Cancellation of Purchase Order

16.1 In the event of cancellation by the Purchaser of any order or part thereof, the Seller shall be entitled to reimbursement of all production and reasonable cancellation costs incurred up to the time of such cancellation, in addition to any damages sustained as a result of such cancellation.

17. Indemnity

17.1 The Purchaser shall indemnify the Seller against all claims, damages, demands, penalties, costs,

charges and expenses which the Seller may become liable for in relation to any infringement or alleged infringement of any intellectual property, including patents, rights relating to trademarks, or copyrights, which result from data, information or instructions supplied by the Purchaser.

18. Patent

18.1 Where the Seller follows designs or instructions furnished or given by the Purchaser, the Purchaser warrants that such designs or instructions do not breach any patent and shall indemnify the Seller against all loss suffered by it as a consequence of any breach by it of any patent or any similar property protection.

19. Applicable Law

19.1 The Purchase Order shall be governed by the laws of New South Wales.