



STANDARD TERMS AND CONDITIONS

1. APPLICABILITY. The sale of any and all Seller (Schwarze Industries Pty Ltd) services and/or goods included in and/or provided in connection with such services ("Goods") shall be conditioned upon, and subject to the following terms and conditions ("Terms and Conditions") which shall form an integral part of any agreement between Buyer (customer) and Seller. Buyer's acceptance of any quotation, proposal or offer made by Seller for the sale of its services and/or Goods (collectively, "Quotation") is expressly made subject to these Terms and Conditions and none of the Terms and Conditions may be added to, modified, superseded or otherwise altered except as revised in writing by Seller. All orders for services and/or Goods received by Seller shall be governed only by these Terms and Conditions, notwithstanding any terms and conditions in any purchase order, release order, or any other form issued by Buyer.

2. PRICE. Prices quoted by Seller shall remain firm for a period of thirty (30) days from the date of a Quotation; provided, however, Seller reserves the right, at any time prior to the acceptance of a Quotation by Buyer to adjust said prices by providing written notice to Buyer regarding any such adjustment. Quotations provided are priced based on Buyer's purchase of the entire scope of services and/or Goods identified in a Quotation. If less than the entire scope of services and/or Goods identified in a Quotation is ordered by Buyer, prices may vary. Unless otherwise stated in a Quotation, registration, delivery, stamp duty and/or start-up services are not included in the price of services and/or Goods to be provided by Seller. Buyer shall pay Seller to the extent of services provided, or for the quantity of Goods shipped should Seller be unable for any reason to provide and/or ship the entire scope of services and/or Goods identified in a Quotation. Prices quoted by Seller are exclusive of all taxes (except taxes levied on Seller's income) including federal, state, provincial and local use, sales, property or similar taxes, and Buyer shall pay all such taxes in full or shall reimburse Seller for any such taxes paid by Seller.

3. SCOPE OF SERVICES AND GOODS. The services and/or Goods provided by Seller pursuant to a Quotation are limited exclusively, at the express request of Buyer, to the services and/or Goods expressly identified in such Quotation. As a result, Seller does not assume responsibility and/or liability for the failure to provide any other services and/or Goods. Modifications, additions or deletions to or from the scope referenced in a Quotation shall only be effective if evidenced in writing signed by Seller and the sale of any and all services and/or Goods affected by such modification, addition or deletion shall be subject to these Terms and Conditions whether or not referenced therein.

4. MINIMUM CHARGE. All services and/or Goods supplied by Seller are subject to a twenty-five dollar (AUD \$25.00) (or the local currency equivalent) minimum charge. If the total quantity of services and/or Goods purchased by Buyer (excluding freight charges) results in a charge of less than twenty five dollars (AUD \$25.00) (or the local currency equivalent) Seller reserves the right to charge Buyer the difference between the price of the services and/or Goods purchased and twenty five dollars (AUD \$25.00) (or the local currency equivalent) as an additional charge for the services and/or Goods purchased.

5. PAYMENT TERMS. Unless otherwise provided in the Quotation, all Seller invoices shall be paid by Buyer within fifteen (15) days of the date of invoice. If Buyer fails to timely pay invoices, Seller shall be entitled to suspend all work and deliveries and issue a late charge equivalent to the lesser of one and one half percent (1.5%) per month (eighteen percent (18%) per annum) or the maximum rate allowed by law on all unpaid invoices or invoices not paid in accordance with these Terms and Conditions. Buyer shall reimburse Seller for all expenses, regardless of their nature or type (including attorneys fees), related in any way to Seller's collection of invoices not paid in accordance with these Terms and Conditions or otherwise incurred by Seller in the enforcement of these Terms and Conditions. Unless otherwise provided in a Quotation, for all services and/or Goods with a Quotation or purchase order price in excess of thirty thousand dollars (AUD \$30,000.00) (or the local currency equivalent), Buyer shall pay a deposit in the amount of forty percent (40%) of the price (due upon Seller's receipt of Buyer's purchase order). Buyer shall make progress payments as stated in the applicable Quotation or otherwise agreed to in a writing signed by Buyer and Seller. Buyer shall have no right to offset any amounts due Seller by any payment or other obligation which Seller or any of its affiliates may owe to Buyer.

6. CANCELLATION. A purchase order may be cancelled by Seller at any time if (a) Buyer fails to strictly comply with the terms governing the order, (b) Buyer becomes insolvent or makes an assignment for the benefit of creditors, (c) a petition in bankruptcy or insolvency is filed by or against Buyer, or (d) amounts due Seller by Buyer are unpaid. Upon cancellation of a purchase order, Buyer shall be obligated to pay to Seller the price for all services performed to date and all Goods that can be completed and shipped within thirty (30) days of the date of cancellation, all special tooling for which commitments have been made by Seller, and all of Seller's costs, expenses and reasonable profit for work in process as of the date of cancellation.

7. CREDIT APPROVAL. All orders are subject to Buyer credit approval by Seller. Seller reserves the right to refuse shipment or provision of any and all services and/or Goods identified in any Quotation or purchase order, to modify the payment terms identified therein or in Section 5 hereof or to cancel without penalty or charge any order or contract formed and concerning the services and/or Goods identified in the applicable Quotation or purchase order if, in its sole discretion and for any reason whatsoever, Seller requests and is unable to secure acceptable payment assurances from Buyer for the services and/or Goods identified in a Quotation or purchase order.

8. DELIVERY TERMS AND DELAYS. Unless otherwise identified, EXW – Ex Works, in a Quotation, all shipments of Goods are defined by Incoterms 2010.

a. Delivery. All dates for the shipment and/or delivery of Goods and/or for the provision of services are approximate. Seller shall not be liable for delay in or failure to make shipment and/or delivery of Goods or commencement, performance or completion of services by any identified date for any reason whatsoever. In the event of any delay, regardless of the cause, the parties shall agree upon a new date for the shipment and/or delivery of Goods and/or commencement, performance or completion of services. In the event of any delay caused by Buyer, Buyer shall pay Seller for all costs and expenses incurred by Seller related to such delay.

b. Freight Charges. Any reference to freight charges contained in a Quotation is an estimate. Seller is not responsible for any differences that may occur between freight estimates contained in a Quotation and actual freight charges applicable at the time of shipment, and Buyer shall incur and be responsible for all costs associated therewith.

c. Packaging. Unless otherwise identified in a Quotation, quoted prices do not include the cost for export or special packaging of Goods and Buyer shall assume and be responsible for those extra costs associated with such export and packaging.

d. Cost of Goods. Unless otherwise stated in a Quotation, Buyer shall pay all cost increases Seller is assessed for materials incorporated into services and/or Goods, including but not limited to steel, copper, and fuel surcharges, to the extent such increases exceed any estimated costs used by Seller to develop a Quotation by ten percent (10%) and which occurs subsequent to the issuance of a Quotation, but prior to the provision of the services and/or delivery of the Goods.

e. Site Condition. Buyer warrants that the site where Goods are to be delivered and/or installed and/or where services are to be performed shall be ready and adequate for Seller's delivery and/or installation of the Goods and/or performance of services. Buyer's obligations in this regard include but are not limited to the removal of all obstructions and institution of adequate safety measures to protect Seller's property, employees, agents and contractors. Buyer shall be responsible for all costs and expenses associated with Seller's delay and/or inability to deliver and/or install any Goods and/or perform any services related to Buyer's failure to comply with this provision. Seller in no way warrants the sufficiency of the site for the services and/or Goods referenced in a Quotation.

9. SECURITY INTEREST. Buyer hereby grants Seller a security interest in the Goods to secure the unpaid balance of the price and all other obligations of Buyer to Seller however arising. Buyer authorizes Seller to file all necessary financing statements and other similar documents required to perfect the security interest granted herein and irrevocably grants Seller a power of attorney to execute any documents on behalf of Buyer relating thereto.

10. WARRANTIES.

a. Products manufactured by Seller ("Seller Products"). To the extent that Seller Products are incorporated into the scope of services and/or Goods stated in a Quotation, such Seller Products shall be warranted in accordance with Seller's Standard Warranty for such Seller Products in effect on the date of sale (incorporated by reference as if fully rewritten herein and a copy of which is attached to the Quotation or is available upon request of Buyer). Repair and replacements provided pursuant to the Standard Warranty do not extend the original warranty provided with the Goods at the time of sale.



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b. Services. Seller warrants that all services performed by Seller will conform in all material respects to the description of services identified in a Quotation and will be performed in a good, workmanlike manner. All claims for breach of this warranty for services performed by Seller must be brought by Buyer within six (6) months of the date of Seller's performance of such services; provided, however, Buyer shall notify Seller of any alleged warranty claims within seventy two (72) hours of Buyer's discovery thereof. Buyer's failure to comply with the terms of this procedure shall void the warranty in this Section 10.b. Seller does not warrant services provided by any third party. Buyer's sole and exclusive remedy for Seller's breach of this warranty for services performed by Seller shall be the re-performance of such services by Seller. Buyer acknowledges and agrees that Seller shall have no liability for loss of use, downtime or any indirect or consequential damage arising from Seller's breach of this warranty for services.

c. Products manufactured by manufacturers other than Seller and/or its affiliates ("Third Party Products"). Third Party Products supplied by Seller to Buyer are not warranted by Seller. Third Party Products may be warranted separately by their respective manufacturers and Seller shall, to the extent possible, assign to Buyer whatever rights Seller may obtain under any such warranties.

d. Inherent Defects. To the extent re-manufacturing, refurbishment, modernization and/or modification services are included within the scope of services identified in a Quotation, any defect in Buyer's equipment to which Seller performs such re-manufacturing, refurbishment, modernization and/or modification services that is attributable in whole or in part to

engineering, design specifications, latent defects, corrosion or fatigue that are inherent to and/or present in or on the equipment is not covered by any warranty of Seller.

e. Non-Transferable. Any warranty of Seller is limited to and only for the benefit of Buyer and is not transferable or assignable by Buyer without the prior written consent of Seller.

THE FOREGOING REPRESENTS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY SELLER TO BUYER WITH RESPECT TO THE GOODS AND/OR SERVICES PROVIDED UNDER A QUOTATION AND IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

BUYER HEREBY WAIVES ANY CLAIM THAT ANY EXCLUSIONS OR LIMITATIONS OF ANY WARRANTY PROVIDED BY SELLER DEPRIVE IT OF AN ADEQUATE REMEDY OR CAUSE ITS AGREEMENT WITH SELLER TO FAIL OF ITS ESSENTIAL PURPOSE. BUYER SHALL BE ENTITLED TO NO OTHER REMEDY REGARDLESS OF THE FORM OF CLAIM OR CAUSE OF ACTION, WHETHER BASED IN AGREEMENT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE.

11. LIMITATION OF DAMAGES. SELLER SHALL HAVE NO LIABILITY TO BUYER OR ANY END USER OF GOODS OR SERVICES PROVIDED UNDER A QUOTATION WITH RESPECT TO THE SALE OF GOODS OR PROVISION OF SERVICES UNDER A QUOTATION FOR LOST PROFITS OR FOR SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES OF ANY KIND WHETHER ARISING IN CONTRACT, TORT, PRODUCT LIABILITY OR OTHERWISE, EVEN IF SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH LOST PROFITS OR DAMAGES. SELLER'S DIRECT DAMAGES ARE LIMITED TO THE CONTRACT PRICE AND IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY END USER OF GOODS OR SERVICES PROVIDED UNDER A QUOTATION FOR ANY DAMAGES WHATSOEVER IN EXCESS OF THE TOTAL PRICE PAID BY BUYER FOR GOODS AND/OR SERVICES REFERENCED IN A QUOTATION.

12. DISCLAIMER (Inspection Services). Notwithstanding any representation made by any party to the contrary in any other verbal or written communication, the performance of any equipment (or component) inspection as all or part of the services under a Quotation by Seller and the preparation of the report derived therefrom are conditioned upon and evidence of Buyer's acknowledgment and acceptance of the following additional terms, conditions and disclaimers:

a. At the request of Buyer, the scope of any equipment (or component) inspection performed by Seller is limited exclusively to a search for readily observable defects apparent on the equipment and on those equipment component parts identified in the inspection scope accompanying a Quotation that are safely and conveniently accessible to the inspecting technician. Seller shall not dismantle the equipment or the equipment components to be inspected, nor shall it use any ultrasonic or other technical means to inspect and detect latent or non-observable defective conditions in the equipment or its components. Notwithstanding the performance of this inspection and regardless of any representation made in any report to the contrary, including the inspection report prepared by Seller, latent or non-observable defects may exist or develop on or in the subject equipment or its components on or following the date of inspection and Buyer is hereby notified of the potential existence thereof. The use of equipment possessing any defect, including latent or non-observable defects, may result in catastrophic equipment failure potentially causing damage to property or injury or death to persons in, on or around the subject equipment.

b. The conditions identified during the equipment (or component) inspection and reported by Seller orally or in writing are representative of the conditions of the subject equipment and its components as they appeared during the inspection. These conditions can and will change immediately following inspection due to the use or non-use of the subject equipment (and its components). The information provided to Buyer as a result of and following the inspection does not reflect any changes in the condition of the subject equipment and/or its components following inspection by Seller and Buyer retains and/or assumes all risk for such changes in condition.

c. The decision concerning whether or not to repair, or replace the equipment or any deficient component of the subject equipment lies exclusively with Buyer. By completing the inspection and preparing the inspection report Seller expressly recommends that Buyer authorize the repair and/or replacement of the equipment or any component identified during the inspection or listed in the report derived therefrom as deficient in any manner or degree prior to operating the subject equipment. Seller hereby notifies Buyer that failure to do so may result in catastrophic equipment failure causing damage to property or injury or death to persons in, on or around the subject equipment.

d. SELLER IS NOT LIABLE FOR CLAIMS, DEMANDS, DAMAGES OR LIABILITY ARISING FROM (I) CAUSES OUTSIDE THE SCOPE OF THE INSPECTION AS IDENTIFIED IN SECTION 12.A., (II) ANY CONDITION THAT OCCURS FOLLOWING THE EQUIPMENT'S USE AFTER AN INSPECTION AS IDENTIFIED IN SECTION 12.B., (III) FAILURE OF BUYER TO REPAIR OR REPLACE ANY EQUIPMENT OR COMPONENT AS IDENTIFIED IN SECTION 12.C.

13. NON-SOLICITATION. Buyer agrees, on behalf of itself and its parents, subsidiaries, affiliates, successors and assigns, that during Seller's performance of the work referenced in a Quotation and for a period of one (1) year thereafter, Buyer shall not directly or indirectly solicit, entice, approach, offer employment to, or employ in any capacity any employee of Seller. For purposes of this section the term "employee" means any individual actively employed by Seller at the time a Quotation is accepted and associated in any way with Seller's performance of the work referenced therein.

14. CONFIDENTIALITY; LICENSE. Without limitation, Buyer shall not at any time disclose to any other person or entity any information relating to the business of Seller, including without limitation, plans and specifications and any other inventions, devices, formulas, processes, programs, software, listings, print-outs, documentation, notes, charts, manuals, programming aids, source codes, object codes, compilations, technology, know-how, price lists, costs, policies, techniques, trade practices, accounting methods, methods of operation or other data that Seller considers confidential, and trade secrets of every kind relating to Seller's business, whether or not patentable or copyrightable. Such information shall remain the exclusive property of Seller and shall be returned to Seller upon request at any time. Further, these Terms and Conditions do not constitute a license or authorization of any kind for Buyer to use any of the trademarks or trade names owned or licensed by Seller. Buyer hereby grants to Seller a worldwide, irrevocable, royalty-free, non-exclusive license to collect, store and use any data collected by Seller during the performance of any inspection and/or services for any internal purposes of Seller, including but not limited to research and development.



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15. INDEMNIFICATION. SELLER SHALL NOT BE LIABLE FOR AND BUYER SHALL RELEASE, INDEMNIFY AND HOLD SELLER, OR ANY ENTITY AFFILIATED IN ANY WAY THEREWITH, HARMLESS FROM ANY CLAIMS, DEMANDS, DAMAGES (REGARDLESS OF THEIR TYPE, INCLUDING, BUT NOT LIMITED TO DIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL), ACCOUNTS, GRIEVANCES, LOSSES AND EXPENSES, WHETHER KNOWN OR UNKNOWN, PRESENT OR FUTURE, ANY AND ALL LIABILITY, OF AND FROM ANY AND ALL MANNER OF ACTIONS, CAUSE(S) OF ACTION, INCLUDING BUT NOT LIMITED TO SUITS FOR CONTRIBUTION AND/OR INDEMNITY AND ALL SUITS IN LAW, IN EQUITY, OR UNDER STATUTE, OF WHATEVER KIND OR NATURE, ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF ACTS OR OMISSIONS OF BUYER, ITS AGENTS, CONTRACTORS, EMPLOYEES OR ANY PERSON UNDER THEIR CONTROL AND RELATING IN ANY WAY TO THE GOODS AND/OR SERVICES PROVIDED UNDER A QUOTATION OR THE EQUIPMENT RELATED THERETO, INCLUDING, BUT NOT LIMITED TO BUYER'S USE, INSTALLATION, INCORPORATION OR SELECTION THEREOF.

16. MANUALS. To the extent an equipment manual is delivered to Buyer with Goods (applicable exclusively to those Goods where such a manual is produced), Seller reserves the right to assess a charge, per manual, for each additional manual requested by Buyer. Each manual produced by Seller is a confidential, proprietary and copyrighted document and may not be copied, published or reproduced in any manner or form without prior written agreement of Seller. Such agreement is at the sole discretion of Seller and Seller may revoke same at its discretion at any time.

17. APPROVAL DRAWINGS. Approval drawings, if provided to Buyer by Seller and either signed by a representative of Buyer with apparent authority to do so or not objected to by Buyer in writing within the time required by Seller, shall constitute exclusive proof regarding Buyer's verification and acceptance of the dimensions and other information relating to the Goods described therein and Buyer shall be entitled to rely on such approval drawings to develop a Quotation and provide the services and/or Goods referenced therein. Buyer hereby assumes any and all responsibility for any inaccurate or incomplete information contained therein. **TO THE EXTENT THAT BUYER PROVIDES THE DESIGN FOR ANY GOODS OR SERVICES TO BE PERFORMED BY SELLER, BUYER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS SELLER AGAINST ALL CLAIMS, SUITS, AND CAUSES OF ACTION AND FROM ALL COSTS, EXPENSES, DAMAGES AND LIABILITIES (INCLUDING BUT NOT LIMITED TO ATTORNEYS AND CONSULTANTS FEES) FOR ACTUAL OR ALLEGED INFRINGEMENT OF ANY UNITED STATES OR FOREIGN PATENT, COPYRIGHT, TRADEMARK, INTELLECTUAL PROPERTY RIGHTS, OR PROPRIETARY RIGHTS OF THIRD PARTIES BY REASON OF THE USE, SALE, MANUFACTURE, OR DESIGN OF GOODS AND/OR SERVICES COVERED BY THESE TERMS AND CONDITIONS.**

18. SURVIVAL. Each of the sections herein intended for the benefit of Seller shall survive expiration or termination of the services or delivery of the Goods outlined in a Quotation.

19. ENTIRE AGREEMENT. These Terms and Conditions and the applicable Quotation, together with Seller's Standard Warranty incorporated herein by reference, represent the entire agreement between Seller and Buyer. **THESE TERMS AND CONDITIONS AND THE PRICES SET OUT IN A QUOTATION SPECIFICALLY RECOGNIZE THE ALLOCATION OF THE RISKS OF PERFORMANCE OF THE PARTIES AS WELL AS THE LIMITATION OF LIABILITY AND DAMAGES AND THE RECOVERY OF COLLECTION COSTS, AND THE PARTIES EXPRESSLY AGREE THAT THESE LIMITATIONS ON REMEDIES, RESPONSIBILITY FOR COLLECTION COSTS, AND OBLIGATIONS TO INDEMNIFY ARE ESSENTIAL PARTS OF THE AGREEMENT BETWEEN THEM AND ARE SPECIFICALLY BARGAINED FOR.** Any purchase order or other document issued by Buyer shall be deemed to (i) be solely for the record keeping convenience of Buyer, and (ii) confirm these Terms and Conditions and not add to, delete from, or otherwise change or modify these Terms and Conditions or those contained in a Quotation.

20. SEVERABILITY. The partial or complete invalidity of any one or more provisions of these Terms and Conditions shall not affect the validity or continuing force and effect of any other provision. If any portion of this these Terms and Conditions shall be determined

to be invalid or unenforceable, that portion shall automatically be modified to the extent necessary to make it valid. Notwithstanding the foregoing, such determination of invalidity or unenforceability shall not affect any other portion of these Terms and Conditions and such other portions shall remain in full force and effect.

21. GOVERNING LAW; JURISDICTION. Any controversy arising out of or related to these Terms and Conditions, a Quotation, the provision of services and/or Goods thereunder, or any contract between Seller and the Buyer shall be construed and governed by the laws of the State of Ohio, including Article 2 of the Uniform Commercial Code as codified in Ohio Revised Code Chapter 1302, notwithstanding conflicts of law principles. Any action arising from or related to these Terms and Conditions, a Quotation, the provision of services and/or Goods thereunder, or any contract between Seller and the Buyer shall be instituted and litigated in any state court located in Clark County, Ohio, or in any federal court with jurisdiction over Clark County, Ohio. Seller and Buyer hereby irrevocably consent to the jurisdiction of the courts of Clark County, Ohio.

22. WAIVER. No waiver by Seller of any breach of any term or condition of these Terms and Conditions shall be deemed a waiver of any other breach. No delay in enforcement of rights by Seller will be deemed a waiver, and Seller's failure to object to any provision contained in any communication from Buyer shall not be deemed an acceptance thereof or a waiver of any of these terms and conditions.

23. ENGLISH LANGUAGE. Buyer and Seller confirm that it is their wish that these Terms and Conditions and each Quotation as well as all other documents relating to these Terms and Conditions and each Quotation, including notices, be drawn up in English only.

Acceptance of Standard Terms and Conditions
Name (Printed): _____
Signature: _____
Date: _____