

**INTERTECH ENGINEERING PTY LTD**  
**TERMS AND CONDITIONS OF TRADE**

**1. Definitions**

In these terms and conditions:

**ACL** means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) and its associated Regulations as amended;

**Agreement** means any agreement or contract entered into for the provision of goods and/or services by Intertech to the Customer;

**consumer** is as defined in the ACL, and in determining if the Customer is a consumer, the determination is made if the Customer is a consumer under the Agreement;

**Intertech or Our / Us / We** means Intertech Engineering Pty Ltd (ACN 055 138 497) of 15 Sir Laurence Drive, Seaford, Victoria, Australia;

**Customer or You** means a person, firm or corporation, jointly and severally if there is more than one obtaining goods and services;

**goods** means any goods supplied by Intertech to the Customer;

**GST** means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended;

**Intellectual Property** means all copyright, trade marks, designs, patents, specifications, drawings, confidential information, whether registrable or not;

**PPSA** means the *Personal Property Securities Act 2009* (Cth) and its associated Regulations as amended;

**services** means any services supplied by Intertech to the Customer;

**Terms** means these Terms and Conditions of Trade; and

**Warranty** means the warranty set out in clause 16.3.

**2. Basis of Contract**

2.1 Unless otherwise agreed by Intertech in writing, the Terms apply exclusively to every contract for the sale of goods or services by Intertech to the Customer, including any Agreement, and cannot be varied or supplanted by any other terms and conditions, including the Customer's terms and conditions of purchase (if any).

2.2 Any written quotation provided by Intertech to the Customer concerning the proposed supply of goods or services is:

- (a) valid for 30 days;
- (b) an invitation to treat only;
- (c) only valid if in writing; and
- (d) subject to the Customer entering into an Agreement on these Terms.

2.3 The Terms may include additional terms in Intertech's quotation, and such additional terms prevail over these Terms to the extent of any inconsistency.

2.4 An Agreement is accepted by Intertech when Intertech confirms its acceptance of an offer from the Customer in writing or electronic means, or provides the Customer with the goods or services.

2.5 Intertech may refuse to accept any offer.

2.6 The Customer must provide Intertech with its specific requirements, if any, in relation to the goods and services.

2.7 Intertech may vary or amend these Terms by notice in writing to the Customer at any time. Any variations or amendments will apply to quotations provided or orders made after the date of notice.

**3. Pricing and delivery**

3.1 Prices shown in an Intertech quotation include GST and any other taxes or duties imposed on or in relation to the goods and services as stated in the quotation. If GST is not stated in the quotation, the Customer must pay any GST and any other taxes or duties imposed on the goods and services in addition to payment of the price of the goods and services.

3.2 Where the Customer notifies Intertech in writing of its nominated delivery address prior to Intertech's quotation, then the prices quoted include delivery to that address.

3.3 The Customer indemnifies Intertech against any loss or damage suffered by Intertech, its contractors or employees as a result of delivery, except where the Customer is a consumer and Intertech has not used due care and skill.

3.4 Where the Customer does not notify Intertech in writing of its nominated delivery address prior to Intertech's quotation, then unless the parties agree otherwise in writing the prices quoted are ex works.

3.5 If the Customer requests any variation to the Agreement, Intertech may notify the Customer it intends to change the price to account for the variation, and in response the Customer may:

- (a) agree to the change in price, and continue with the Agreement; or
- (b) reject the change in price, and withdraw its request for the variation.

**4. Payment**

4.1 Subject to clause 4.3, payment for the goods must be made within 30 days, and for services must be made within 14 days from date of invoice.

4.2 Intertech reserves the right to require pre-payment in full prior to delivery of the goods or commencement of the services.

4.3 Payment by cheque is not deemed made until the proceeds have cleared.

4.4 Payment terms may be revoked or amended at the discretion of Intertech immediately upon giving written notice to the Customer, and such revocation or amendment applies from the date of such notice.

**5. Payment Default**

5.1 If the Customer defaults in payment by the due date of any amount payable to Intertech, then all money which would become payable by the Customer to Intertech at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and Intertech may, without prejudice to any other remedy available to it:

- (a) claim a general lien over all the Customer's goods in the possession of Intertech, and subject to giving 14 days written notice to the Customer, sell the property by private treaty or public auction, whichever Intertech in its sole discretion deems appropriate, and allocate the proceeds to the repayment of its sale costs and expenses and any sum which is due and payable by the Customer;
  - (b) charge the Customer interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983 (Vic)* plus 4 per cent for the period from the due date until the date of payment in full;
  - (c) charge the Customer for, and the Customer must indemnify Intertech from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Conditions or to recover any goods;
  - (d) cease or suspend for such period as Intertech thinks fit, supply of any further goods or services to the Customer;
  - (e) by notice in writing to the Customer, terminate any Agreement with the Customer so far as unperformed by Intertech;
- without effect on the accrued rights of Intertech under any Agreement.

5.2 Subject to any applicable statutory stay of proceedings, clauses 5.1(c) and (d) may also be relied upon, at the option of Intertech:

- (a) where the Customer is an individual and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
- (b) where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

**6. Passing of Property**

6.1 Until full payment in cleared funds is received by Intertech for all goods and services supplied by it to the Customer, as well as all other amounts owing to Intertech by the Customer:

- (a) title and property in all goods remain vested in Intertech and do not pass to the Customer;
- (b) the Customer must hold the goods as fiduciary bailee and agent for Intertech, and must keep the goods separate from its goods and maintain the labelling and packaging of Intertech;
- (c) the Customer must hold the proceeds of any sale of the goods on trust for Intertech in a separate account however failure to do so will not affect the Customer's obligation to deal with the proceeds as trustee;
- (d) in addition to its rights under the PPSA, Intertech may without notice, enter any premises where it suspects the goods may be and remove them, notwithstanding that they may have been attached to other goods not the property of Intertech, and for this purpose the Customer irrevocably licences Intertech to enter such premises and also indemnifies Intertech from and against all costs, claims, demands or actions by any party arising from such action.

## 7. Personal Property Securities Act

- 7.1 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.
- 7.2 For the purposes of the PPSA:
- terms used in clause 7 that are defined in the PPSA have the same meaning as in the PPSA;
  - these Terms are a security agreement and Intertech has a Purchase Money Security Interest in all present and future goods supplied by Intertech to the Customer and the proceeds of the goods;
  - the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any time;
  - the Customer must do whatever is necessary in order to give a valid security interest over the goods which is able to be registered by Intertech on the Personal Property Securities Register.
- 7.3 The security interest arising under this clause 7 attaches to the goods when they are collected or dispatched from Intertech's premises.
- 7.4 Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.
- 7.5 Intertech and the Customer agree to contract out of and nothing in sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms.
- 7.6 To the extent permitted by the PPSA, the Customer agrees that:
- the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on Intertech will apply only to the extent that they are mandatory or Intertech agrees to their application in writing; and
  - where Intertech has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 7.7 The Customer must immediately upon Intertech's request:
- do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and
  - procure from any person considered by Intertech to be relevant to its security position such agreements and waivers (including as equivalent to those above) as Intertech may at any time require.
- 7.8 Intertech may allocate amounts received from the Customer in any manner Intertech determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods supplied by Intertech.
- 7.9 For the purposes of section 275(6) of the PPSA, the parties agree and undertake that these Terms and any information pertaining to the sale of goods and details of the goods shall be kept confidential at all times. Neither party may disclose any information pertaining to these Terms or the sale of the goods, except as required by law or that is already in the public domain.
- ## 8. Risk and Insurance
- 8.1 The risk in the goods and all insurance responsibility for theft, damage or otherwise will pass to the Customer immediately on the goods being delivered to the Customer or taken from Intertech's premises.
- 8.2 The goods are sold to the Customer on the basis that the Customer has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the goods.
- 8.3 The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use, installation or possession of any of the goods sold by Intertech, unless recoverable from Intertech under a statutory guarantee under the ACL.
- 8.4 Intertech has no obligation to insure, and is not liable for any damage to, any property of the Customer left in Intertech's possession.
- ## 9. Performance of Agreement
- 9.1 Any period or date for delivery of goods or provision of services stated by Intertech is intended as an estimate only and not a contractual commitment.
- 9.2 Intertech will use its reasonable endeavours to meet any estimated dates for delivery of the goods or completion of the services, but will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.
- 9.3 Intertech will use its reasonable endeavours to deliver the correct quantity ordered, however the Customer acknowledges that there may be difficulties in producing exact quantities, estimates or orders. The Customer cannot reject short or over delivery of the goods and must pay for or be refunded for the returned goods on a pro rata basis.
- 9.4 If Intertech cannot complete the services by any estimated date, it will complete the services within a reasonable time.

## 10. Cancellation

- 10.1 If Intertech is unable to effect delivery or provision of goods or services, then Intertech may cancel the Customer's order (even if it has already been accepted) by notice in writing to the Customer without liability.
- 10.2 Where Intertech cancels an order in accordance with clause 10.1, it must refund to the Customer any amounts paid to it by the Customer in respect of any goods or services that will not be provided.
- 10.3 No purported cancellation or suspension of an order or any part thereof by the Customer is binding on Intertech after that order has been accepted.
- 10.4 If the Customer cancels the order after acceptance by Intertech, then Intertech will be entitled to damages for breach of contract.

## 11. Returns and Exchanges

- 11.1 Subject to clauses 11.4 and 11.5, and to the maximum extent permitted at law, Intertech will not be liable for any defects, shortages, damage or non-compliance with the specifications in the Agreement unless the Customer notifies Intertech in writing with full details within 10 business days of delivery of the goods or provision of the services.
- 11.2 If the Customer fails to give the notice as required in clause 11, it is deemed to have accepted the goods or services.
- 11.3 The Customer must obtain Intertech's prior written approval for the return of goods and pay all freight charges associated with the return of goods unless Intertech accepts the reasons stated for the return is due to its fault.
- 11.4 If any defects, shortages, claim for damage or non-compliance with the Agreement specifications are accepted by Intertech, Intertech may, at its option, replace the defective or missing goods or re-provide services, or refund the price of the defective or missing goods or services.
- 11.5 Subject to clause 11.6, Intertech will not under any circumstances accept goods for return that:
- have been specifically produced, imported or acquired to fulfil the Agreement; or
  - have been used or altered in any way; or
  - are not in their original condition and packaging.
- 11.6 If the Customer is a consumer, nothing in this clause 11 limits any remedy available for a failure of the guarantees in section 56 or 57 of the ACL.

## 12. Intellectual Property

- 12.1 The Customer acknowledges that it has no proprietary right or interest in any intellectual property created or owned by Intertech in the design, creation or manufacture or supply of the goods or services (**Intertech Intellectual Property**), and the Customer must not at any time create, sell, manufacture or process any goods using or taking advantage of the Intertech Intellectual Property without Intertech's prior written consent.
- 12.2 The Customer warrants that, where it provides any intellectual property for use by Intertech, it is legally entitled to do so.
- 12.3 Any intellectual property provided to the Customer by Intertech in connection with the goods or services remains Intertech's exclusive property and must be returned to Intertech on demand and must not be copied or communicated to any third party without the express written consent of Intertech.
- 12.4 Intertech may discontinue delivery of any goods, the manufacture, sale or use of which, in the reasonable opinion of Intertech, would infringe any intellectual property rights for which Intertech is not licensed.
- 12.5 The Customer is responsible for, and indemnifies and holds Intertech harmless against any loss or damage arising from or in connection with the provision of the goods or services, including without limitation, any action for infringement of intellectual property rights brought by any third party against Intertech or the Customer in relation to the goods or any intellectual property provided by the Customer to Intertech.

## 13. Grant of Licence

- 13.1 Subject to this Agreement, Intertech hereby grants to the Customer a limited, non-exclusive, non-transferable licence to use the Intertech Intellectual Property relating to the goods or services for the Customer to use the goods or benefit from the services.
- 13.2 The Customer must not in any way use, deal with, assign, transfer, modify or alter, or attempt to use, deal with, assign, transfer, modify or alter, any of the Intertech Intellectual Property in an unauthorised manner or for an unauthorised purpose.

## 14. Liability

- 14.1 Except as these Terms specifically state, or as contained in any express warranty statement provided in relation to the goods or services, the Agreement does not include by implication or any other term, condition or

- warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for failure.
- 14.2 If the Customer is a consumer, nothing in these Terms restricts, limits or modifies the Customer's rights or remedies against Intertech for failure of a statutory guarantee under the ACL.
- 14.3 If the Customer on-supplies the goods to a consumer and:
- the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of Intertech's liability to the Customer;
  - the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption, payment of any amount required under section 274 of the ACL is the absolute limit of Intertech's liability to the Customer;
- howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Customer or any third party.
- 14.4 If clause 14.2 or 14.3 do not apply, then other than as stated in the Terms Intertech is not liable to the Customer in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Customer or any third party.
- 14.5 Intertech is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill, or any liability to any other party, except to the extent of any liability imposed by the ACL.
- 14.6 The Customer acknowledges that, whether or not the Customer has provided Intertech with any product specifications relating to the goods or services:
- it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by Intertech in relation to the goods or services or their use or application;
  - it has not made known, either expressly or by implication, to Intertech any purpose for which it requires the goods or services, and it has the sole responsibility of satisfying itself that the goods or services are suitable for the use of the Customer; and
  - any description of the goods provided in a quotation or invoice is given by way of identification only and the use of such description does not constitute a contract of sale by description.
- 14.7 The Customer agrees not to make any claim or demand against Intertech for any matter referred to in clause 14.6.
- 14.8 Nothing in these Terms is to be interpreted as excluding, restricting or modifying, or having the effect of excluding, restricting or modifying, the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.
- 15. Force Majeure**
- 15.1 Subject to clause 15.2, neither party is liable in any way howsoever arising under the Agreement to the extent that it is prevented from acting beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism or war. If an event of force majeure occurs, either party may suspend or terminate the Agreement by written notice to the other party.
- 15.2 Nothing in clause 15.1 operates to excuse the Customer from any obligation to pay money to Intertech.
- 16. Warranty**
- 16.1 If the Customer is a consumer, Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the services, You are entitled:
- to cancel you service contract with Us; and
  - to a refund for the unused portion, or to compensation for its reduced value.
- You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, You are entitled to have the failure rectified in a reasonable time. If this is not done You are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensation for any other reasonably foreseeable loss or damage from a failure in the goods or service.
- 16.2 The benefits of this Warranty are in addition to any rights and remedies imposed by Australian State and Federal legislation that cannot be excluded.
- 16.3 Intertech warrants that, subject to the exclusions and limitations set out in this clause 16 and in clause 14.1, the goods it supplies pursuant to these Terms will be free from defects in materials and workmanship (**Defect**) for a period of 12 months from the date of delivery to the Customer (**Warranty Period**).
- 16.4 This Warranty is transferable to a subsequent customer if the goods are sold by the Customer during the Warranty Period.
- 16.5 If a manufacturing Defect appears in the goods in the Warranty Period, Intertech will, at its discretion:
- replace or repair the goods the subject of the Defect free or charge; or
  - cause the goods the subject of the Defect to be replaced or repaired by a qualified repairer free of charge; and
- subject to clause 16.1, repair or replacement of the goods is the absolute limit of Intertech's liability under this Warranty.
- 16.6 Intertech may replace goods the subject of a Defect with goods of similar quality, grade and composition where identical goods are not available.
- 16.7 This Warranty does not apply:
- to any damage or defects caused by normal wear and tear;
  - where the goods are damaged by the Customer, or any third party;
  - where Intertech cannot establish any Defect in the goods after testing or inspection;
  - where the goods the subject of any Warranty claim have not been transported, stored, installed, serviced or maintained strictly in accordance with any reasonable instructions provided by or on behalf of Intertech;
  - where the alleged Defect has arisen due to an act, negligence or omission of the Customer or any third party, including with respect to maintenance; or
  - where the goods the subject of any Warranty claim have been subject to unauthorised repair, alteration, modification or customisation.
- 16.8 The following sets out the process for claiming under the Warranty:
- a party wishing to make a claim under the Warranty (**Claimant**) must contact Intertech using the details set out in clause 16.9 within 7 days of first becoming aware of the alleged Defect;
  - any Warranty claim must be accompanied by proof of purchase or transfer of ownership (as appropriate), full details of the alleged Defect, and appropriate documentation such as transportation, storage, installation and maintenance records;
  - the Claimant must make the goods the subject of the Warranty claim available to Intertech or its nominated agent for inspection and testing;
  - unless otherwise required by law, the Claimant bears the cost of transporting the goods to and from Intertech or its nominated agent; and
  - where testing carried out by Intertech or its nominated agent fails to establish a Defect in the goods the subject of the claim, the Claimant will be liable for Intertech's costs of such testing.
- 16.9 Intertech Engineering Pty Ltd can be contacted on (03) 8770 5500 or at 15 Sir Laurence Drive, Seaford, Victoria, 3198, Australia.
- 17. Miscellaneous**
- 17.1 The law of Victoria from time to time governs the Terms and the parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 17.2 Failure by Intertech to enforce any of these Terms shall not be construed as a waiver of any of Intertech's rights.
- 17.3 If any part of the Terms is unenforceable, it shall be read down so as to be enforceable or, if it cannot be so read down, the part shall be severed from these Terms without affecting the enforceability of the remaining part or Terms.
- 17.4 A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile are deemed received on confirmation of successful transmission.
- 17.5 Any dispute arising between Intertech and Customer in relation to any Agreement shall be submitted to arbitration in accordance with and subject to The Resolution Institute Rules for conduct of Commercial Arbitrations.
- 18. Privacy**
- 18.1 The Customer must comply with the Australian Privacy Principles in connection with any personal information supplied to it by Intertech in connection with this Agreement.