

## Sales - Terms and Conditions of Trade

### 1. DEFINITIONS AND INTERPRETATIONS

- 1.1 "ACL" means the Australian Consumer Law, which is contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth).
- 1.2 "Agreement" means this agreement incorporating these terms and conditions, any schedule to this agreement and includes any written variation to this agreement.
- 1.3 "Charges" means the monies payable by the Customer to the Supplier as specified on the particular quote, order, invoice, or other document.
- 1.4 "Commissioning" means the process of planning, documenting, scheduling, testing, adjusting and where required, training to verify that the contract work or capital equipment provided operates in a fully functional way to comply with the Customer's specifications / requirements noted in any tender, sales order, proposal or quotations. The costs and responsibilities for carrying out any commissioning work required will normally be stated in the individual contract, sale order or tender document.
- 1.5 "Customer" means the person/s or any person acting on behalf of and with the authority of the Customer requesting the Supplier to provide the Goods / Services as specified in any proposal, quotation, order, invoice, or other documentation, and:
- if there is more than one Customer, is a reference to each Customer jointly and severally.
  - if the Customer is a Trustee, shall be bound in the capacity as a trustee.
  - includes the Customer's executors, administrators, successors and permitted assigns.
- 1.6 "Customer Management Policy" means OFA's commitment and strategy to Customers including values and performance delivery expectations OFA commits to its Customers, and also relationship aspects OFA expects Customers to adhere to, a copy of which is available on the OFA website.
- 1.7 "Delivery Address" means the place for delivery as specified on the Order.
- 1.8 "Delivery Date" means the delivery date specified on the Order, or a date subsequently notified in writing by OFA to the Customer.
- 1.9 "Dispute" means any dispute or issue arising between OFA and the Customer, pursuant to which either OFA or Supplier considers it has a claim against the other party.
- 1.10 "Defective" means Goods and / or Services (or any aspect of them) not in accordance with the order or which are damaged, deficient, faulty, inadequate, or incomplete.
- 1.11 "Due Date for Payment" from the Customer to the Supplier means, unless otherwise stated on the front of this Agreement, thirty (30) days from either the date of the Sales Invoice / Commercial Invoice, or the date of provision of the services whichever is the later (except in unforeseen cases of Force Majeure). Where Force Majeure circumstances arise, OFA will work closely with the Customer to agree on a mutually acceptable, commercial resolution to organise revised payment terms.
- 1.12 "Feasibility Study" is an analysis, that takes into account, all of a project's relevant factors to ascertain the likelihood of completing the project successfully. The costs of any Feasibility Study required, as noted in any tender documents or quotations, will normally be the responsibility of the Supplier, unless as otherwise agreed, between the Supplier and the Customer.
- 1.13 "Force Majeure" means unforeseen circumstances that prevent someone or a party to this contract from fulfilling a contract clause, which may relieve a party from performing its contract obligations, due to an event outside the reasonable control of the affected party. The effect of Force Majeure is that it may enable the non-performing party to escape liability for failing to perform as a result of the unforeseen event. It is not limited to events in Australia and includes all forms of international contracts with Customers. Examples of Force Majeure for the terms of this agreement include, but are not limited to:
- Natural disasters
  - Government intervention
  - Epidemics
  - Pandemics
- 1.14 "Goods and Services" means all Goods (including but not limited to, any supplementary aftermarket accessories and/or consumables) or Services supplied by OFA to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.14 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.15 "Insurance" includes any policy of insurance effected by the Customer under this Agreement.
- 1.16 "Law" means:
- Federal, State, and local government legislation including regulations, by-laws, orders, awards, and proclamations.
  - Common law and equity.
  - Authority requirements and consents, certificates, licenses, permits and approvals (including conditions in respect of those consents, certificates, licenses, permits and approvals).
  - Guidelines of Authorities with which the Supplier is legally required to comply.
- 1.17 "OFA" means Oreflow Australia Pty Ltd and shall be, for the purposes of these terms and conditions and the Agreement, where relevant, be interchangeable with "Supplier".
- 1.18 "Order" means an acceptance of a Quote issued by OFA to supply goods and / or provide services to the Customer subject to these terms and conditions and includes a description of the goods and / or services, expected delivery date and price.
- 1.18 "Order Number" means a specific digit number, which appears on all valid OFA quotes.
- 1.19 "Quote / Quotation" means a document that OFA submits to a Customer with a proposed price for OFA's goods and / or services based on certain conditions.
- 1.20 "Price" means the price payable (plus any GST where applicable) for the Goods as agreed between the Supplier and the Customer in accordance with clause 4 below.

- 1.21 *“Progress Payments” are partial payments made from the Customer to the Supplier, that cover the amount of work completed at a given time, in relation to the work agreed and completions stages. These can include, but are not limited to, agreed dollar amounts or percentage completion against overall Price. The structuring of progress payments is normally detailed in the quote, tender or contract documents, but can also be noted on Orders, Quotations or other documents deemed appropriate and agreed between the Supplier and the Customer.*
- 1.22 *“Retention monies” are monies still payable to the Supplier by the Customer as part of the Price but withheld until certain conditions stated in the contract are met. The retentions will be stated on a contract to contract basis and normally set at a percentage of the Price agreed between the Supplier and the Customer. This can include, but is not limited to cash retentions, a bank guarantee for percentage of successful commissioning and / or percentage of warranty periods noted in the contract.*
- 1.23 *“Sales Invoice” / “Commercial Invoice” means a document provided by OFA to the Customer which evidences the delivery of Goods and / or performance and provision of Services and for which the Customer is obliged to pay the Price to the Supplier.*
- 1.24 *“Supplier” means Oreflow Australia Pty Ltd, its successors and assigns, or any person acting on behalf of, and with the authority to, provide goods and / or services on behalf of Oreflow Australia Pty Ltd – “OFA”.*
- 1.25 *“Tender Document” is a submission made by the Supplier to the Customer in response to an invitation to tender. It makes an offer from the Supplier to the Customer for the supply of goods and / or services. The format of tender documents will vary from Customer to Customer in line with their stated requirements.*
- 1.26 *“Website” means <http://www.oreflow.com.au>*

**2. ACCEPTANCE**

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts Goods and / or Services provided by the Supplier.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Supplier and the Customer.
- 2.3 Electronic signatures shall be deemed to be accepted by both parties.
- 2.4 Email confirmations are also deemed to be acceptance by both parties.

**3. CHANGE IN CONTROL**

- 3.1 The Customer shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s name, address, contact phone, email or fax number/s, change of trustees).
- 3.2 The Customer shall be liable for any loss incurred by the Supplier as a result of the Customer’s failure to comply with this clause.

**4. PROVISION OF GOODS AND / OR SERVICES**

- 4.1 The Supplier agrees to sell, and the Customer agrees to buy the Goods and/or Services on and subject to these Terms and Conditions of Trade (“Terms”).
- 4.2 These Terms constitute the entire agreement and supersede any other agreement or understanding between the parties.
- 4.3 The Customer must, in receipt of the Goods or provision of the Services, comply with the Supplier’s Customer Management Policy as detailed on the Supplier’s Website.
- 4.4 On request by the Supplier, the Customer must provide any information and assistance reasonably required by OFA on any matters relating to the Goods and / or Services provided.
- 4.5 At the Supplier’s sole discretion delivery of the Goods/Services shall be deemed to have taken place when:
  - a) the Supplier provides the Goods/Services at the Supplier’s address; or
  - b) the Supplier provides the Goods/Services at the Customer’s nominated address.
- 4.6 Where the Supplier is to provide any Goods/Services at the Customer’s nominated address then the Customer shall be liable for all costs incurred by the Supplier from the time they depart from, and until they return to, their normal place of work (including, but not limited to, mileage and time calculated at the Supplier’s standard rates and any Goods purchased for the Services).
- 4.7 Where the Supplier is requested to store the Customer’s Goods or equipment, or where Goods or equipment are not collected within twenty-four (24) hours after notification to the Customer that Goods are ready for collection, then the Supplier (at its sole discretion) may charge a reasonable fee for storage.
- 4.8 Any time specified by the Supplier for delivery of the Goods is an estimate only, and the Supplier will not be liable for any loss or damage incurred by the Customer as a result of late delivery. The parties shall make all reasonable endeavors to enable the Goods to be delivered at the time and place as was initially agreed between the parties.
- 4.9 In the event that the Supplier is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.

**5. DELIVERY**

- 5.1 The Supplier shall supply goods and / or services as, where and when specified in the Customer’s order or otherwise directed by the Supplier in writing.
- 5.2 The Supplier shall use best endeavours to deliver the goods and / or services to the delivery address by the agreed delivery date.
- 5.3 The Supplier shall, where applicable, keep the Customer informed of any delays or other matters which may affect the delivery of the goods /services.
- 5.4 The Supplier shall use best endeavours to ensure that the goods are suitably packed to avoid damage in transit or in storage.
- 5.5 The Supplier shall use best endeavours to ensure packages/shipments are marked with the relevant order number, item number, destination, contents, quantity, date and where appropriate, method of dispatch and weight of each package/shipment.
- 5.6 On reasonable notice, and where requested in writing by the Customer, The Supplier shall provide for the Customer (and its representatives) full access to the Supplier premises and locations to allow the supplier to inspect the goods at any time prior to delivery.

## **6. CANCELLATION**

- 6.1 Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any obligation (including that relating to payment) under the Terms the Supplier may suspend or terminate the supply of Goods to the Customer. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier has exercised its rights under this clause.
- 6.2 The Supplier may, on account of a breach of the terms by the Customer, cancel any contract to which the Terms apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Customer provided that the Supplier has provided not less than 24 hours' notice to the Customer of the breach alleged. On giving such notice the Supplier shall repay to the Customer any sums paid in respect of the Price. Subject to compliance with this clause the Supplier shall not be liable for any loss or damage howsoever arising from such cancellation.
- 6.3 In the event that the Customer cancels the delivery of Services the Customer shall be liable for any loss incurred by the Supplier (including, but not limited to, any loss of profits) up to the time of cancellation.

## **7. QUALITY**

- 7.1 The Supplier shall use best endeavours to ensure that all goods / services supplied, strictly comply with all applicable laws, regulations, codes, Australian and (where appropriate) International Standards, including any performance criteria specified and agreed.
- 7.2 The Supplier shall use best endeavours to ensure that all goods all goods / services provided match the description referred to in the Customer order, and conform to all relevant specifications, drawings, samples, and / or other descriptions.
- 7.3 The Supplier shall use best endeavours to ensure that all goods are fit for the Customer's intended purpose, free from damage and defects in workmanship and materials and are of merchantable quality.
- 7.4 The Supplier shall use best endeavours to ensure that services are provided in a thorough, professional and competent manner using the standard of care, skill, expertise and diligence that would reasonably be expected by appropriately trained and qualified personnel providing similar services in Australia and, where appropriate, internationally.
- 7.5 The Supplier shall use best endeavours to ensure that the goods are free of all liens and that OFA has unencumbered title to them.
- 7.6 The Supplier shall use best endeavours to ensure that its employees, contractors, and agents will at all times hold all appropriate licences required by Law for the provision / supply of goods and / or the performance of the services.

## **8. PRICE, PAYMENT & INVOICING**

- 8.1 At the Supplier's sole discretion, the Price shall be either:
- as indicated on invoices provided by the Supplier to the Customer in respect of the Services supplied; or
  - the Supplier's estimated Price (subject to clause 9) which shall not be deemed binding upon the Supplier as the actual Price can only be determined upon completion of the Services. The Supplier shall inform the Customer in writing if the actual Price is likely to exceed the original estimate noted on any quote, proposal, or other documentation.
  - the Supplier's quoted Price in any sales order, contract, or tender document, shall be binding upon the Supplier provided that the Customer accepted the Supplier's quotation in writing within the relevant period stated in the quotation (and as subject to clause 9).
- 8.2 At the Supplier's sole discretion, a deposit may be required, the amount or percentage of which will be stipulated at the time of the Customer's order or in any tender document and shall become immediately due and payable.
- 8.3 Where the Supplier is requested to store the Customer's Goods or equipment, or where Goods or equipment are not collected within twenty-four hours of advice to the Customer that they are ready for collection, then the Supplier (at its sole discretion) may charge a reasonable fee for storage.
- 8.4 At the Supplier's sole discretion:
- payment shall be due on completion of the Services; or
  - payment shall be due before undertaking the Services; or
  - payment for approved Customers shall be made by instalments / progress payments in accordance with the Supplier's payment schedule or as agreed in any tender document; or
  - payment for approved Customers shall be due thirty (30) days from invoice unless Force Majeure exists as noted in clause 8.10
- 8.5 Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated in the quotation or tender document, then payment shall be due seven (7) days following the date of the invoice.
- 8.6 C.O.D jobs are payable immediately on completion of work and prior to any release of any completed jobs
- 8.7 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute. This also includes retention monies outstanding and agreed as part of any signed contract or accepted tender submission.
- 8.8 Payment will be made by cash, or by cheque, bank cheque, eft, electronic/on-line banking, or by any other method as agreed to between the Customer and the Supplier.
- 8.9 Unless otherwise stated expressly, all prices are exclusive of GST and the Customer must (where appropriate e.g. Australian Customers) on provision of a Tax Invoice pay to the Supplier, all applicable GST payable in respect of the supply of the Goods and / or Services to the Customer.
- 8.10 Where Force Majeure circumstances arise, OFA will work closely with the Customer to agree on a mutually acceptable, commercial resolution for payment arrangements. This can include but is not limited to considering:
- All of the available options for completion of the contract including possible alternatives to mitigate any fallout.
  - Whether the entire contract is affected, or whether there are parts of the contract than can still be completed.
  - Whether there is only a temporary interruption to the performance of the contract, or completion will in fact be impossible.

## **9. ADDITIONAL CHARGES – VARIATIONS AND EXTRAS**

- 9.1 The Supplier reserves the right to change the Price:
- if a variation to the Goods and / or Services which are to be provided is requested; or

- b) where additional Goods and / or Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, faults which are found upon assembly, disassembly, and/or further inspection) which are only discovered upon operation or commissioning of equipment.
  - c) in the event of increases to the Supplier in the cost of labour or Goods, or fluctuations in currency exchange rates, which are beyond the Supplier's control.
  - d) If a change of circumstances within the initial agreed scope arises that involves additional assistance from the Supplier at the Customer's request, this shall be agreed and documented. This can include, but is not limited to, further site visits to Customer's premises, assistance with commissioning of capital equipment, or further reports requested by the Customer and any further feasibility study work.
- 9.2 If the Supplier has been requested by the Customer to diagnose a fault that requires disassembly and/or testing, all costs involved will be charged to the Customer.
- 9.3 The Customer acknowledges and agrees that (in the event of non-payment) the Supplier shall be entitled to:
- a) retain any components / equipment replaced during the provision of the Services.
  - b) retain any consumables and / or capital equipment designed and manufactured as part of the provision of services.
  - c) retain all proceeds obtained from the sale of such components.

## 10. DISPUTE RESOLUTION

We sincerely hope this never has to happen, however, in the event of disputes the following applies to both parties:

- a) If the Customer disputes an invoice the Supplier will suspend other services to the Customer until the dispute is resolved.
- b) The Customer must provide the Supplier with any information or documentation the Supplier requests in relation to the invoice or dispute to allow the Supplier best means to expedite a positive outcome and resolution between both parties.
- c) If a difference or dispute between the parties arises in connection with an invoice, or the subject matter or interpretation of the Terms ("Dispute"), either party may give the other party, written notice identifying the dispute ("Dispute Notice").
- d) Within 7 business days of receipt of the Dispute Notice, representatives of the parties having authority to bind the parties shall discuss the dispute ("Dispute Meeting").
- e) Providing the provisions of this clause have been complied with, and the dispute has not been resolved within 10 days following the Dispute Meeting, either party may commence proceedings in court.

## 11. TITLE AND RISK

- 11.1 The Supplier and the Customer agree that ownership of the Goods shall not pass until the Customer has paid the Supplier all amounts owing to the Supplier (including any outstanding retention monies, bank guarantees due to the Supplier as part of an original quote, contract, or tender document).
- 11.2 Receipt by the Supplier of any payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared, or recognised.
- 11.3 It is further agreed that until ownership of the Goods passes to the Customer in accordance with clause 11.1:
- a) the Customer is only a bailee of the Goods and must return the Goods to the Supplier on request.
  - b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged, or destroyed.
  - c) the Customer irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods.
  - d) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Supplier.
  - e) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- 11.4 Risk of damage to, or loss of the Goods, passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 11.5 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.
- 11.6 The Customer acknowledges and agrees that where the Supplier has performed temporary repairs on the component/equipment/part that:
- (a) the Supplier offers no guarantee against the reoccurrence of the initial fault, or any further damage caused.
  - (b) the Supplier will immediately inform the Customer in writing of the fault and shall provide the Customer with an estimate for the full repair of the component / equipment / part.

## 12. INTELLECTUAL PROPERTY

- 12.1 Any intellectual property rights created from the Supplier's performance of this contract and under these Terms, vest in and remain with the Supplier on creation provided that the Supplier hereby grants to the Customer a licence in perpetuity to use those intellectual property rights in order to maintain and repair the goods supplied by the Supplier to the Customer subject to a licence fee. Sub-clauses 12.2-12.7 below are all subject to the licence hereby granted by the Supplier to the Customer.
- 12.2 Any tools, patterns, designs, drawings, or other material used in the manufacturing, provision of goods and / or services created by the Supplier or supplied by the Supplier remains the property of the Supplier.
- 12.3 Any materials or drawings provided by the Supplier to the Customer as part of any contract that are in the Customer's possession for whatever period are subject to the following conditions:
- a) The Customer holds them solely as a bailee of the Supplier.
  - b) The Customer must store them securely and maintain them in good repair / order.
  - c) The Customer must use them solely for the purpose of performing this contract.

- d) The Customer must return them to the Supplier on demand.
- 12.4 If the Customer, for whatever reason, subsequently has to further manufacture or procure the manufacture of the goods and services and the goods are required to be manufactured or fabricated to Supplier's specifications or special requirements (and are not goods of the type ordinarily manufactured by the Customer or the Customer's sub- contractors) the Supplier will own all intellectual property rights of any kind that arise as a result of, or in the course of, the further design and manufacture of the goods.
- 12.5 If further Services are required to be performed to the Customer's specifications or special requirements, the Supplier will own all intellectual property rights of any kind that arise as a result of, or in the course of, the performance of the services.
- 12.6 The Customer will do all necessary acts to give effect to the Supplier's rights under clauses 12.4 and 12.5.
- 12.7 The Customer warrants that the receipt of the goods and services from the Supplier, the use of goods provided by the Supplier or any resale or hiring out of the goods provided by OFA will not infringe the intellectual property rights of any person and OFA will not have to pay any licence fee, royalty or other amount to any person.
- 13. PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA")**
- 13.1 If any clauses in these Terms contravene any provisions in the PPSA, or amendments thereto, such clause or clauses shall be deleted without affecting the validity of the remaining clauses of these Terms.
- 13.2 The Customer consents to the Company registering a Security Interest on the Personal Property and Securities Register (PPSR) in a manner the Company deems appropriate for Goods sold to or otherwise provided to the Customer in accordance with these Terms and/or any other agreements with the Company and the Customer agrees to provide all assistance required by the Company to register such Security Interests.
- 13.3 The Customer acknowledges and agrees that these Terms create a Security Interest in the Secured Property and, to avoid doubt, the proceeds of sale of the Secured Property for the purposes of the PPSA.
- 13.4 The Customer acknowledges and agrees that if any part of the Secured Property becomes the inventory of the Customer, the Customer will not permit any other Security Interest (including, but not limited to, floating or other charges, liens or pledges) to be raised in respect of the Secured Property unless the Company has perfected the Security Interest in the Secured Property prior to the Customer's possession of the Secured Property.
- 13.5 To avoid doubt, the following definitions of the PPSA apply to the Company's Terms: Financing Statement, Financing Change Statement and Security Interest have the same meaning as defined by the PPSA and a Security Agreement is a security agreement created between the Customer and the Company in the PPSA.
- 13.6 The Customer acknowledges and agrees that by placing orders for Goods the Company's Terms constitute a Security Agreement for the purposes of the PPSA in such Goods and create a Security Interest in Goods previously supplied which have not been fully paid for and for Goods to be supplied in the future, and to avoid doubt, the sale proceeds of the Secured Property.
- 13.7 The Customer agrees to do everything the Company requests including, but not limited to, signing and completing documents without delay to register and/or perfect any Security Interest and for the Company to exercise its rights in connection with the Secured Property and proof that the Customer has complied with these Terms.
- 13.8 The Customer agrees to indemnify and reimburse the Company on demand for any losses and costs incurred by Company in relation to the PPSA, including any registration, or any response to an amendment, demand or a request under section 275 of the PPSA.
- 13.9 The Customer agrees not to register or permit a third party to register a Financing Statement, a Financing Change Statement or any other document in respect of a Security Interest on Goods supplied by the Company that have not been fully paid for without the prior written consent of the Company being obtained beforehand.
- 13.10 With regard to Section 64 of the PPSA the Customer warrants that under no circumstances shall the Customer permit a bank or other financial institution to register a "super priority security interest" or any other priority security interest on the Company's unpaid-for Goods or other property that may be on premises, mines or any other sites that are not under the Company's direct control.
- 13.11 The Customer agrees to promptly tell the Company of any material change in its methods and policies of installing, selling and/or reselling Goods provided by the Company which would change the nature of proceeds of such sales.
- 13.12 With regard to sections 95, 96, 115, 125 and any other parts of the PPSA and amendments thereto, the Company and the Customer agree that, to the extent allowed by the PPSA, these do not apply to any Security Interests created by these Terms. Furthermore, the Customer waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) together with verification statements unless all such notices are a requirement of the PPSA in which case all notices or documents must be given in accordance with the PPSA.
- 13.13 To the extent permitted by the PPSA the provisions of sections 127, 129(2) & (3), 132, 134(2), 135, 136(3), (4) & (5) and 137 will not apply to the enforcement of the Company's Security Interests.
- 13.14 With regard to sections 142 & 143 of the PPSA the Customer waives its rights as a grantor and/or a debtor under the PPSA.
- 13.15 The Customer shall unconditionally approve any actions taken by the Company with regard to all PPSA Clauses and as may be amended from time to time.
- 14. DEFECTS, WARRANTIES AND RETURNS, AUSTRALIAN COMPETITION AND CONSUMER ACT (CCA) 2010**
- 14.1 The Customer must inspect the Goods on delivery and must within thirty (30) days of delivery notify the Supplier in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification, the Customer must allow the Supplier to inspect the Goods.
- 14.2 Under applicable Federal, State, and Territory Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these Terms (Non-Excluded Guarantees).
- 14.3 The Supplier acknowledges that nothing in these Terms purports to modify or exclude the Non-Excluded Guarantees.

- 14.4 Except as expressly set out in these Terms or in respect of the Non-Excluded Guarantees, the Supplier makes no warranties or other representations under these Terms including but not limited to the quality or suitability of the Goods. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.5 If the Customer is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2.
- 14.6 If the Supplier is required to replace the Goods under this clause or the CCA, but is unable to do so, the Supplier may refund any money the Customer has paid for the Goods.
- 14.7 If the Customer is not a consumer within the meaning of the CCA, the Supplier's liability for any defect or damage in the Goods is at the Supplier's sole discretion:
- a) limited to the value of any express warranty or warranty documentation provided to the Customer by the Supplier.
  - b) limited to any warranty to which the Supplier is entitled if the Supplier did not manufacture the Goods.
  - c) otherwise negated absolutely.
- 14.8 Subject to this clause 14, the return of goods will only be accepted by the Supplier provided that:
- a) the Customer has complied with clause 14.1.
  - b) the Supplier (acting reasonably) has agreed that the Goods are defective.
  - c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant). (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 14.9 Notwithstanding clauses 14.1 to 14.8 but subject to the CCA, the Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- a) the Customer failing to properly maintain or store any Goods.
  - b) the Customer using the Goods for any purpose other than that for which they were designed.
  - c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user.
  - d) the Customer failing to follow any instructions or guidelines provided by the Supplier.
  - e) fair wear and tear, any accident, or act of God.
- 14.10 In the case of secondhand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second-hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by the Supplier as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that the Supplier has agreed to provide the Customer with the second-hand Goods and calculated the Price of the second-hand Goods in reliance of this clause 14.10.
- 15. DEFAULT AND CONSEQUENCES OF DEFAULT**
- 15.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of six percent (6.0%) per annum after as well as before any judgment.
- 15.2 If the Customer owes the Supplier any money (including outstanding Retention monies agreed as part of the contract) the Customer shall indemnify the Supplier from and against all legal costs and related disbursements incurred by the Supplier in recovering the debt and bank dishonour fees. The Supplier shall not supply any other further goods or services to the Customer until all outstanding monies are paid or a suitable payment arrangement has been made.
- 15.3 Further to any other rights or remedies the Supplier may have under this contract, if a Customer has made payment to the Supplier, and the transaction is subsequently reversed, the Customer shall be liable for the cost of the reversed transaction.
- 15.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:
- a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Customer will be unable to make a payment when it falls due.
  - b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors.
  - c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 15.5 In the event of default the Supplier may report the nonpayment of funds to a credit reporting agency which may in turn affect the Customer's ability to obtain further credit.
- 16. CONFIDENTIALITY AND PRIVACY ACT 1988**
- 16.1 The Supplier respects the privacy of personal information (**Personal Information**) including personal and contact information, such as an individual's name, street, postal, email addresses, telephone and fax numbers, professional information, financial and bank account details, and consumer credit information.
- 16.2 The Customer agrees for the Supplier to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B., occupation, previous credit applications, credit history).
- 16.3 The Customer agrees that the Supplier may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- a) to assess an application by the Customer for credit; and/or
  - b) to notify other credit providers of a default by the Customer; and/or
  - c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years
- 16.4 The Customer acknowledges, accepts, and agrees:
- a) to the Supplier's Privacy Policy statement available from <http://www.oreflow.com.au>.
  - b) that the Supplier may use Personal Information of the Customer in accordance with its privacy policy statement; and
  - c) that without using such information, the Supplier may not be able to properly provide the Goods or the Services.

- 16.5 The Supplier and the Customer agree that neither party may disclose, or allow any person to disclose, confidential information to third parties including:
- the subject matter, correspondence in respect of, and contents of this agreement (but not its actual existence)
  - information regarding a customer's machine
  - the subject matter and the existence of any dispute or difference
  - the Price and any discounts, rebates, or cost saving measures
- 16.6 The obligations to maintain confidentiality under clause 16.4 apply except for a disclosure:
- permitted with the prior written consent of the other party
  - required by law, any stock exchange or court order
  - as is reasonably necessary for professional advisers

#### **17. UNPAID SUPPLIER'S RIGHTS**

- 17.1 Where the Customer has left any item with the Supplier for repair, modification, exchange or for the Supplier to perform any other service in relation to the item and the Supplier has not received or been tendered the whole of any monies owing to it by the Customer, the Supplier shall have, until all monies owing to the Supplier are paid:
- a lien on the item; and
  - the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 17.2 The lien of the Supplier shall continue despite the commencement of proceedings, or judgment for any monies owing to the Supplier having been obtained against the Customer.

#### **18. GENERAL**

- 18.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality, and enforceability of the remaining provisions shall not be affected, prejudiced, or impaired.
- 18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia the state in which the Supplier has its principal place of business and are subject to the jurisdiction of the courts in that state.
- 18.3 The Supplier shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Supplier of these terms and conditions.
- 18.4 In the event of any breach of this contract by the Supplier the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 18.5 The Supplier may assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 18.6 The Customer cannot licence or assign without the written approval of the Supplier which approval shall not be unreasonably withheld.
- 18.7 The Supplier may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of the Supplier's sub-contractors without the authority of the Supplier.
- 18.8 The Customer agrees that the Supplier may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Supplier provides notice to the Customer of the changes, or otherwise at such time as the Customer makes a further request for the Supplier to provide Goods to the Customer.
- 18.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm, or other event beyond the reasonable control of either party.
- 18.10 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent, and that this agreement creates binding and valid legal obligations on them.
- 18.11 **In summary, the Customer acknowledges, accepts, and agrees overall as part of these terms and conditions:**
- Supplier Customer Management Policy**
  - Completion of Supplier Credit Application form**
  - Supplier Warranty Policy; and**
  - Supplier Warranty Terms & Conditions**

These documents are all available for download from the Supplier's website - <http://www.oreflow.com.au>