

S-Rack Australia Pty Ltd
ABN 41 625 908 474
(Company)

Terms and Conditions of Sale

These Terms and Conditions apply to the sale of goods and provision of services by the Company to the Purchaser. Any order placed by the Purchaser is deemed to be an order incorporating these Terms and Conditions irrespective of any inconsistencies which may be introduced in the order or any other document provided by the Purchaser to the Company. Any additional or differing terms or conditions proposed by the Purchaser do not become part of the agreement between the parties and are expressly rejected by the Company. If the Purchaser is taken to be a “consumer” for the purposes of the Australian Consumer Law, these Terms and Conditions are subject to the provisions of the Australian Consumer Law which cannot be excluded, restricted or modified.

1. Definitions

In these Terms and Conditions:

- (a) **Australian Consumer Law** means the law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any corresponding state or territory legislation, including any statutory amendment or re-enactment for the time being in force;
- (b) **Company** means S-Rack Australia Pty Ltd ABN 41 625 908 474;
- (c) **consumer** means a Purchaser who is taken to have acquired the goods or services as a consumer for the purposes of the Australian Consumer Law;
- (d) **goods** means any goods agreed to be supplied by the Company to the Purchaser under these Terms and Conditions;
- (e) **Incoterms** means the International Commercial Terms known as “Incoterms 2010” as published by the International Chamber of Commerce, as amended from time to time;
- (f) **Purchaser** means a person to whom any quotation is made by the Company and includes any person offering to contract with the Company on these Terms and Conditions;
- (g) **services** means any services agreed to be performed by the Company for the Purchaser under these Terms and Conditions; and
- (h) **Small Business Contract** means a small business contract as that term is defined and interpreted under the Australian Consumer Law from time to time.

2. Order and acceptance

- 2.1 Any quotation made by the Company is not an offer to sell the goods or to provide the services and no order made by the Purchaser in response to a quotation binds the Company until accepted by the Company in writing or by the commencement of supply of the goods and / or the services. The Company is not obliged to accept an order placed by the Purchaser.
- 2.2 An order made by the Purchaser is deemed a binding contractual offer which the Company is entitled to accept within 5 business days after its receipt. On acceptance by the Company of an order from the Purchaser (such accepted order is referred to as “**Purchase Order**”) a binding contract for the supply of goods and / or services specified in the Purchase Order is concluded on these Terms and Conditions (**Contract**).

- 2.3 The Contract comprises:
- (a) the relevant Purchase Order;
 - (b) any documentation referred to in the relevant Purchase Order; and
 - (c) these Terms and Conditions.
- 2.4 In the event that there is any inconsistency between the provisions of the documents comprising a Contract, such inconsistency shall be resolved in the following descending order of priority:
- (a) the relevant Purchase Order;
 - (b) any documents referred to in the relevant Purchase Order; and
 - (c) these Terms and Conditions.
- 2.5 The Company reserves the right, but is not obliged, to make changes, modifications or adjustments to the goods at any time without the Purchaser's consent which:
- (a) do not affect physical or functional interchangeability or performance; or
 - (b) are required for purposes of safety; or
 - (c) are required to comply with the current technical rules.
- If the Contract is a Small Business Contract, the Company must notify the Purchaser of any such changes.
- 2.6 The Company is and remains the owner of copyright and all other intellectual property rights for all quotations, drawings, illustrations, dimensions, weights, programs and other performance data, including all information stored in electronic media, and other documents provided by the Company to the Purchaser in relation to goods or services (**Documents**). Any of the Documents may only be made available by the Purchaser to third parties with the prior written consent of the Company. If the Purchaser does not order the goods or services to which the Documents relate from the Company or if the Company does not accept an order placed by the Purchaser, the Purchaser must return all Documents immediately to the Company free of charge.
- 2.7 The Company's quotes are based on the structural and technical requirements that the Purchaser has provided to the Company, including but not limited to the details set out in the relevant quote. If following conclusion of the Contract it should be established that the details or the structural and technical requirements on which the Contract is based do not correspond with the actual circumstances and requirements, the Company will inform the Purchaser accordingly and will point out any potential adjustment options, as well as any ensuing additional costs.
- 2.8 In the event that, after the conclusion of the Contract, a variation to the goods or services specified in the Purchase Order is requested by the Purchaser, or if the changes to the contractually agreed purpose as requested by the Purchaser or any other requests by the Purchaser alter the basis for pricing of the goods or services, an adjustment to the price must be agreed by the parties in writing, acting reasonably.
- 2.9 The Company is entitled to have the goods or services specified in the Purchase Order manufactured or performed by third parties in part or in full.

3. Prices and GST

- 3.1 Prices of the goods and / or services are exclusive of GST (as defined in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*). If any supply of goods or services made by the Company to the Purchaser is subject to GST, the Purchaser must pay to the Company, in addition to any amount or consideration payable by the Purchaser in relation to that supply, the amount of any GST payable in respect of the supply at the time the consideration for the supply is payable.
- 3.2 Unless otherwise specified, any price quotations by the Company:
- (a) do not include transportation costs;
 - (b) are based on the current cost of labour and material and will be subject to contract price adjustment at the option of the Company (in case of a Small Business Contract, any such adjustments will be notified to the Purchaser prior to acceptance of an order and the Purchaser may withdraw the order if it does not agree with the adjustment);
 - (c) are valid for thirty (30) days from the date of issuance and effective only for purchase orders accepted by the Company within that period; and
 - (d) are valid only if Purchaser's requested delivery date is within six (6) months of the date on which the order is placed.

4. Delivery of goods and performance of services

- 4.1 Delivery of goods will be in accordance with the Incoterms stated in the relevant Purchase Order (**Applicable Incoterms**). For purposes of these Terms and Conditions, "delivery" means the time when the goods are deemed to be delivered in accordance with the Applicable Incoterms.
- 4.2 If the Company is obligated to deliver the goods to the Purchaser under the relevant Purchase Order and in the absence of specific written instructions from Purchaser, the Company will select the carrier, the place of shipment and the way and means of transport within its discretion, without accepting any liability for cheapest or fastest transport.
- 4.3 Risk of loss and / or damage to the goods (but not title in the goods) will pass to Purchaser upon deemed delivery of the goods in accordance with the Applicable Incoterms. The Purchaser is responsible for and must pay all shipping, freight and insurance charges, which charges the Company may require the Purchaser to pay in advance.
- 4.4 Any date quoted for delivery of the goods and / or performance of the services is an estimate only and the Company is not liable to the Purchaser for any loss or damage howsoever arising for failure to deliver the goods and / or perform the services on or before the quoted date. If the Contract is not a Small Business Contract, the Purchaser must accept the goods when delivered and / or the services when performed irrespective of any failure by the Company to deliver the goods or to perform the services by the quoted date.
- 4.5 If and to the extent that the Company is unable to observe any binding delivery dates for reasons beyond its responsibility or control (e.g. non-availability of the goods or services), the Company will immediately notify the Purchaser thereof and at the same time inform the Purchaser of the estimated, new delivery date. In the event that the delivery should not be available on the new delivery date, the Company is entitled to cancel the delivery of the goods or services either in full or in part and will reimburse the Purchaser for any payments already rendered with respect to the cancelled goods or services. An unavailability of goods or services is deemed to exist in particular, but not limited to, if the Company's suppliers fail to supply the Company in a timely manner.

- 4.6 If on request of the Purchaser the dispatch or delivery of the goods is postponed for more than one week after the goods are cargo-ready, the Company is entitled to invoice the Purchaser a storage fee for each month of delay started in the amount of:
- (a) the actual storage costs (if they can be determined); or
 - (b) 0.5% of the price for the goods per month, however, not more than 5% of the price for the goods in aggregate (if the actual storage costs cannot be determined).
- 4.7 Except where the Purchaser has rights or remedies under the Australian Consumer Law which cannot be excluded, the Company is not liable to the Purchaser or any other party for any direct or indirect or consequential injury loss or damage whatsoever by reason of any delay in delivery of the goods or performance of the services irrespective of whether the same is due to the negligence of the Company or any other party.
- 4.8 If under the relevant Purchase Order, the Company is obliged to make deliveries to the project site or any location at the project site:
- (a) the Purchaser must ensure that access to the project site is granted to the Company's employees or employees of any third parties commissioned by the Company; and
 - (b) if the unloading of the goods must be carried out by the Company, the Purchaser must make available to the Company a suitable and sufficiently large storage location directly on the project site, with the result that during the whole construction period no relocation of the goods will be necessary. If nevertheless a relocation should be required, the Purchaser must bear the sole costs and risk for such relocation.
- 4.9 The Company reserves the right to deliver the goods or services by instalments. If delivery is made by instalments, the Purchaser is not entitled to:
- (a) terminate or cancel the order; or
 - (b) any loss or damage howsoever arising for failure of the Company to deliver any instalments on or before the quoted date.
- 4.10 Unless agreed otherwise in writing, the installation of the goods is the sole responsibility of Purchaser.

5. Acceptance of goods and services

Subject to any applicable law, goods and services will be deemed to have been accepted by the Purchaser, unless the Purchaser notifies the Company within a reasonable period of time (not to exceed 14 days from date of delivery or such longer period as required under any applicable law, including the Australian Consumer Law) of a defect (Rejection). Purchaser must notify the Company in writing or by facsimile of the reason for Rejection and allow for on-site inspection, repair or replacement by the Company. Subject to any applicable law, the return of any goods is at Purchaser's expense and any associated risk of damage for returned goods is the responsibility of Purchaser until received, inspected and accepted by the Company.

6. Cancellation

Any order for goods and / or services may only be cancelled, varied or suspended by the Purchaser with the prior written consent of the Company (which must not unreasonably be withheld) and in the event of such cancellation, variation or suspension, the Purchaser undertakes to reimburse and indemnify the Company for any reasonable costs, expenses or charges incurred by the Company in preparation for and in the execution of an order.

7. Quantities and quality

- 7.1 All goods supplied are subject to reasonable availability to the Company of suitable materials and components and the Company reserves the right to substitute suitable alternative materials and components where reasonably necessary.
- 7.2 Whilst every effort is made to ensure their accuracy, the description, illustrations and materials contained in any catalogue price list, brochures, leaflets or other descriptive matter provided by or on behalf of the Company represent the general nature only of the items described therein and save where the Company has accepted an order of goods specified as so described or illustrated, do not form any part of an order or agreement or amount to any representation or warranty in respect of the goods.
- 7.3 The Purchaser warrants and represents that any goods supplied by the Company which are based in whole or in part upon designs, drawings or specifications supplied to the Company by or on behalf of the Purchaser do not infringe any intellectual property rights of third parties and that any such designs, drawings or specifications are complete in every respect to enable the Company to supply the goods in compliance with all requirements of the Purchaser or of any applicable law. The Purchaser indemnifies the Company against any action, loss, cost, claim or damage that may be brought against or suffered by the Company for any breach of this warranty by the Purchaser.
- 7.4 Subject to any applicable law, the Company does not warrant or represent that any goods supplied by the Company which are based upon any designs, drawings or specifications supplied to the Company by or on behalf of the Purchaser will achieve any standard of performance or capacity whatsoever and the Purchaser acknowledges that it does not rely on the skill and the judgment of the Company for the fitness of the goods for any purpose of the Purchaser.

8. Warranty and liability

- 8.1 Subject to the Australian Consumer Law, the Company's liability is limited at its option to:
- (a) in the case of a supply of goods:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the payment of the cost of replacing the goods or acquiring equivalent goods;
 - (iii) the payment of the cost of having the goods repaired; or
 - (iv) the repair of the goods; and
 - (b) in the case of performance of services:
 - (i) the performance of the services again; or
 - (ii) the cost of having the services performed again.
- 8.2 No claim can be made by the Purchaser against the Company, unless the Purchaser:
- (a) notifies the Company in writing of the facts or matters which form part of any such claim and the nature and extent of any alleged defects within 14 days of the Purchaser becoming aware of the same or such longer period as required under any applicable law, including the Australian Consumer Law; and
 - (b) in the case of a supply of goods, makes the goods available for inspection by representatives of the Company in the condition in which they were delivered by the

Company. In particular, the Purchaser may not make any claim (other than a claim that cannot be excluded under any applicable law, including the Australian Consumer Law) if the goods have been disassembled or otherwise modified by or on behalf of the Purchaser.

- 8.3 As a precondition for claiming any remedies for any defects from the Company, the Purchaser must first pay the purchase price for the goods or services in full without any deductions.
- 8.4 The Purchaser must allow the Company such time and opportunity as is necessary for the Company to effect any remedy owed by the Company, in particular (but without limitation) the Purchaser must deliver any goods claimed to be defective to the Company for purposes of examination. In case of replacement or repair of any defective goods, the Purchaser must first return the defective goods to the Company and any replacement or repair by the Company of defective goods does not include the disassembly of the defective goods nor the reinstallation of any replacement goods.
- 8.5 To the extent the Company is liable for any defects, its liability is based on the specification of goods that has been agreed with the Purchaser. Such a specification of goods is considered to have been agreed only where technical product descriptions have been provided by the Company to the Purchaser at the time of the acceptance of the Purchaser Order or have otherwise been expressly incorporated into the Contract. The Company assumes no liability for any representations made to the public by the Purchaser or any other third parties (e.g. advertising statements).
- 8.6 The Purchaser must indemnify, defend, and hold harmless the Company and its affiliates, agents, employees, officers, directors, shareholders and contractors from any claims, losses, liabilities, expenses, costs, suits or damages, including reasonable attorney's fees, and court costs arising out of:
- (a) the Purchaser's breach of these Terms and Conditions and of any other agreement between the parties;
 - (b) the improper use or demonstration of the goods by Purchaser or its agents or employees; or
 - (c) the modification, alteration or repair of the goods by Purchaser or its agents or employees.
- 8.7 The following statement applies only if, and to the extent that, the Purchaser is a consumer: *"Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. Nothing in these Terms and Conditions purports to exclude, restrict or modify any rights that cannot be excluded, restricted or modified by law, including any rights under the Australian Consumer Law."*

9. Limitation of liability

- 9.1 To the extent permitted by law and subject only to clause 9.3, the Company is not liable to the Purchaser in contract, tort, law or otherwise for any of the following:
- (a) any loss, cost, damage or expense to the extent that it is for indirect, special, economic, punitive or consequential loss, where consequential loss means any loss, cost, damage or expense beyond the normal measure and beyond that which every person in alike situation would suffer;
 - (b) any loss of revenue, business or profits or any nature whatsoever, loss of expected savings, loss of chance or business opportunity, business interruption, loss or

reduction of goodwill or damage to reputation or any loss of value of intellectual property;

- (c) permissible or usual deviations (tolerances) of the goods or services from any specifications set out in the relevant Purchaser Order;
- (d) any defects or damage to the goods caused by:
 - (i) inappropriate use by the Purchaser, a third party commissioned by the Purchaser or by use in deviation from normal operating conditions;
 - (ii) excessive load or wear and tear as well as use of the goods outside their normal scope of use or beyond those provided for under the terms of Contract;
 - (iii) improper installation, assembly or commencement of operation of the goods by the Purchaser or any third parties commissioned by the Purchaser, in particular by disregarding manufacturer specifications;
 - (iv) lack of or improper maintenance (e.g. non-compliance with maintenance intervals as specified by the manufacturer and maintenance not performed by a qualified maintenance person);
 - (v) parts being replaced improperly by the Purchaser or any third parties commissioned by the Purchaser; or
 - (vi) any defective consumable materials that do not meet the original specifications being used;
- (e) cosmetic faults, i.e. minor deviations from the required quality of goods which are insignificant for the value and functional soundness of the goods;
- (f) any transport, installation, removal, labour or other costs, incurred by the Purchaser in connection with the supply of the goods; or
- (g) technical advice or assistance given or rendered by it to the Purchaser whether or not in connection with the supply of goods or performance of services for or to the Purchaser provided always that the Company has rendered such services with due care and skill and that any materials supplied in connection with those services are reasonably fit for the purpose for which they are supplied.

9.2 To the extent permitted by law and subject only to clause 9.3, no action, whether in contract or tort including negligence, may be brought by the Purchaser against the Company more than twelve (12) months after delivery of the goods or provision of the services or, to the extent that the Purchaser is a consumer, such longer period as applicable under the Australian Consumer Law.

9.3 If, and to the extent that, the Purchaser is a consumer, nothing contained in this clause 9 will limit the rights of the Purchaser against the Company under the Australian Consumer Law.

10. Infringement of third party intellectual property rights

10.1 The Company does not give any warranty or make any representation to the effect that the goods and / or services do not infringe any third party intellectual property rights. If a third party should bring a successful claim against the Purchaser for infringement of that third party's intellectual property rights (**IP Rights**) caused by goods or services supplied by the Company that were used by the Purchaser in conformity with their specifications and these Terms and Conditions, the Company is liable to the Purchaser only as follows:

- (a) subject to paragraph (c) below, the Company may, within its discretion choose whether to acquire, at its own expense, the right to use the IP Rights with respect to the supplies concerned or whether to modify the goods and / or services to ensure that they no longer infringe the IP Rights or replace them. If it is not possible for the Company to reasonably do so, the Purchaser is entitled to exercise any statutory rights available;
- (b) the Company's liability under this clause 10 is subject to the limitations set out in clause 9;
- (c) the obligations of the Company set out in paragraph (a) above only apply if the Purchaser:
 - (i) notifies the Company of any such claim brought by the third party in writing; and
 - (ii) does not concede the existence of an infringement and leaves any protective measures and settlement negotiations to the Company's discretion; and
 - (iii) stops using the supplies in order to reduce the damage or for other good reason, it must inform the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.

10.2 Subject to any applicable law, the Purchaser cannot bring a claim against the Company if:

- (a) the Purchaser is responsible for the breach of the IP Rights.
- (b) the breach of the IP Rights is caused by or attributable to:
 - (i) a request made by the Purchaser with respect to the goods or services;
 - (ii) an application or use of the goods or services by the Purchaser that was not intended or foreseeable by the Company; or
 - (iii) the fact that the goods or services are changed by the Purchaser or are used in connection with products that were not delivered by the Company.

10.3 Further claims by the Purchaser against the Company and its agents on account of defects of title or other claims than those set out in this clause 10 are excluded to the extent permitted by law.

11. Protection of Company's intellectual property rights

11.1 The Purchaser acknowledges and agrees that all intellectual property rights in the goods and in any material relating to the goods are and will remain the property of the Company. This includes, but is not limited to, all intellectual property rights in technical information or know-how of the Company, whether written or oral, including but not limited to, the manufacturing knowledge of the Company, whether in the form of patented or unpatented inventions, procedures and methods, processes, current and accumulated skills or experience and other information and knowledge relating to the development, manufacture, packaging, sale or testing of the goods and all drawings and specifications, diagrams and instructions embodying such information and knowledge, that have been disclosed by the Company to the Purchaser as part of a tender process, quotation, order confirmation or otherwise during the performance of the Contract (collectively, the **Company IP**).

11.2 The Purchaser acknowledges that these Terms and Conditions do not grant to the Purchaser any right, title or interest in or to the Company IP.

- 11.3 The Purchaser must not, whether directly or indirectly or through any third party:
- (a) disclose or copy any material containing Company IP other than with the express prior consent of the Company;
 - (b) take any action to register, or permit, authorise or assist any other person to register, any Company IP;
 - (c) challenge the validity or ownership of the Company IP; or
 - (d) reverse engineer, decompile or disassemble any goods or any parts thereof.

12. Insolvency and default

12.1 If any of the following occurs:

- (a) the Purchaser defaults in any payment due to the Company;
- (b) a resolution is passed or proposed or a petition is presented or an application filed for the winding up of the Purchaser;
- (c) a liquidator, administrator, receiver, controller or receiver and manager is appointed over the property or any part of the property of the Purchaser;
- (d) the Purchaser makes or proposes to make any arrangement with its creditors; or
- (e) the Purchaser becomes insolvent, is wound up or enters into bankruptcy,

then, subject only to sections 415D, 434J and 451E of the *Corporations Act 2001* (Cth), the Company may at its option withhold further deliveries of goods, cease performing services or cancel any orders, without prejudice to the Company's rights under these Terms and Conditions.

12.2 If the Contract is a Small Business Contract and any of the following occurs:

- (a) a resolution is passed or proposed or a petition is presented or an application filed for the winding up of the Company;
- (b) a liquidator, administrator, receiver, controller or receiver and manager is appointed over the property or any part of the property of the Company;
- (c) the Company makes or proposes to make any arrangement with its creditors; or
- (d) the Company becomes insolvent, is wound up or enters into bankruptcy,

then the Purchaser may at its option terminate or suspend the whole or any outstanding part of the Contract, without prejudice to the Purchaser's rights under these Terms and Conditions.

13. Payment terms

13.1 All invoices are payable in accordance with the payment terms set out in the relevant Purchase Order and without any deductions, unless otherwise agreed in writing. If the Contract is not a Small Business Contract, the Company reserves the right to change the payment terms at any time when in the Company's opinion the Purchaser's financial condition or previous payment record so warrants.

13.2 The Company may charge the Purchaser interest at a rate of 5% per annum or the maximum amount permitted by law, whichever is less, on all overdue amounts.

- 13.3 If the Company does not receive forwarding instructions sufficient to enable it to despatch the goods within 14 days of notification that they are ready, the Purchaser is deemed to have taken delivery of the goods and the terms of payment apply from such date.
- 13.4 If the Company must take steps or action to recover any amount due to it, the Purchaser is responsible for all reasonable costs and disbursements incurred by the Company in recovering the monies due.
- 14. Retention of title**
- 14.1 The Company retains title to the goods until it has received full payment for the goods and all other amounts owing by the Purchaser to the Company for any other goods and / or services provided by the Company.
- 14.2 The Purchaser acknowledges and agrees that:
- (a) the retention of title under clause 14.1 creates a Security Interest in the goods and their Proceeds in favour of the Company and that Security Interest is a Purchase Money Security Interest;
 - (b) until the date of final payment of all amounts referred to in clause 14.1, it:
 - (i) will not allow anything to be done or act in a way that might adversely affect the Security Interest in the goods that is granted to the Company;
 - (ii) must not dispose of the goods except in the ordinary course of the Purchaser's business;
 - (iii) must not move the goods from the Purchaser's premises without the Company's prior written consent;
 - (iv) must not allow any person other than the Company to have or acquire any Security Interest in the goods;
 - (v) must insure the goods for their full insurable or replacement value (whichever is higher) with a reputable insurer; and
 - (vi) must not remove, deface or obliterate any identifying mark or number on any of the goods; and
 - (c) it indemnifies the Company against all of the Company's reasonable direct costs associated with enforcing its Security Interest (including reasonable legal fees on a full indemnity basis).
- 14.3 The terms "Security Interest", "Proceeds" and "Purchase Money Security Interest" used in this clause have the respective meanings given to those terms in the *Personal Property Securities Act 2009* (Cth).
- 14.4 To the extent permitted by law, the parties agree to contract out of sections 96, 120, 121(4), 123, 125, 126, 130, 132(3)(d), 132(4), 135, 142 and 143 of the *Personal Property Securities Act 2009* (Cth).
- 14.5 Without limiting clause 14.4, the Company does not need to give the Purchaser any notice required under the *Personal Property Securities Act 2009* (Cth), including a notice of a verification statement, unless the requirement for the notice cannot be excluded.
- 14.6 Until such time as title in the goods passes to the Buyer, the Company is entitled, in the event the Purchaser fails to pay for the goods in full as required under these Terms and Conditions or becomes insolvent, enters into bankruptcy or is wound up, to enter any premises where it

suspects the goods may be located in order to search for and remove the goods without committing a trespass (even though they may be attached or annexed to other goods or land not the property of the Purchaser) and for this purpose the Purchaser irrevocably licenses the Company to enter such premises and undertakes that it will procure any necessary authority to enter from any relevant person and also indemnifies the Company from and against all loss suffered or incurred by the Company as a result of exercising such rights, except to the extent that the Company has been negligent or breached the law or these Terms and Conditions.

15. Force Majeure

Without prejudice to the generality of any previous exclusion or limitation of liability, the Company is not liable for any failure to fulfil any terms of any transaction governed by these Terms and Conditions if fulfilment has been delayed, hindered or prevented by any circumstances whatsoever which are not within the Company's control and if the Company is able to fulfil some but not all of the demand for its goods and / or services the Company may allocate its available supplies and resources amongst its customers in such a manner as the Company in its absolute discretion considers to be fair.

16. Anti-bribery laws

The Purchaser must:

- (a) comply with all laws relating to anti-bribery and anti-corruption and all policies of the Company relating thereto as notified to the Purchaser from time to time and not contravene any such law or policy;
- (b) promptly notify the Company if any request or demand for financial or other advantage of any kind is received by the Purchaser in connection with the provision of the goods and / or the services or if any foreign public official is appointed as an officer or employer of or acquires an interest in the Purchaser;
- (c) have and enforce as appropriate its own policies and procedures to ensure compliance with this clause 16; and
- (d) ensure that any person for whom the goods and / or services are to be provided complies with this clause 16.

17. Governing law and jurisdiction

- 17.1 The validity, interpretation, enforceability, and performance of these Terms and Conditions are governed by and must be construed in accordance with the laws applicable in New South Wales, Australia without reference to provisions concerning conflicts of law and under exclusion of the *United Nations Convention on Contracts for the International Sale of Goods 1980* (CISG).
- 17.2 Each of the parties irrevocably submits to the non-exclusive jurisdiction of the courts of the State of New South Wales, Australia.

18. Miscellaneous

- 18.1 The failure of either party to enforce at any time any provision of these Terms and Conditions is not to be construed to be a waiver of such provision or the right thereafter to enforce each and every provision. No waiver by either party, either expressly or implied of any breach of any of these Terms and Conditions is to be construed as a waiver of any other breach of such term or condition.
- 18.2 Neither party must assign or otherwise transfer its rights or obligations hereunder without the prior written consent of the other party, which must not be unreasonably withheld.

- 18.3 The Company may sub-contract the whole or any part of the production or delivery of the goods and / or the performance of the services agreed to be supplied by the Company to the Purchaser.
- 18.4 If a provision of these Terms and Conditions would, but for this clause, be unenforceable, that provision must be read down to the extent necessary to avoid that result and, if the provision cannot be read down, must be severed without altering the validity and enforceability of the remainder of these Terms and Conditions.
- 18.5 These Terms and Conditions constitute the entire agreement between the parties and supersede all previous terms and conditions imposed by the Company and may be altered by the Company by giving 30 days' notice to the Purchaser. If the Contract is a Small Business Contract, the Purchaser may consider the variation and, if not acceptable, may elect not to proceed with the purchase of goods or services ordered before the date of the variation, but which are intended to be subject to the variation. The Purchaser must notify the Company of its election not to proceed in writing.