

Standard Terms and Conditions for Sale of Products or Provision of Services**Definitions**

1. In these Standard Terms and Conditions:

Agreement means these Standard Terms and Conditions; the Quote including any special conditions set out therein; and any Specifications;

Buyer means entity to which Products or Services are being supplied by the Seller;

Confidential Information means communications between the parties, the terms of this Agreement and any information that concerns the business, operations, finances, plans of a party and/or any related body corporate of a party and is disclosed to or acquired by the other party and which: is by its nature confidential; is designated by the party as confidential; or the other party knows or ought to know is confidential, but does not include information which: is or becomes public knowledge other than by a breach of this Agreement; is in the possession of the other party without restriction in relation to disclosure on or before the date on which it is disclosed to or acquired by the other party; or has been independently developed or acquired by the other party;

Delivery Date means the date by which the Products are to be delivered or the Services are to be completed, as the case may be, as set out in the Quote;

Due Date, for an invoice, means 30 days after date of issue of the invoice;

Force Majeure Event means an act of God; war or warlike operations; acts of terrorism; insurrections or riots; fires; floods or explosions; serious accidents; pandemics, epidemics or quarantine restrictions; delay or default by contractors or sub-contractors; any act of government (including delays in approvals or clearances, governmental priorities and regulations or orders affecting materials, facilities or incomplete or completed Services); strikes, labour disputes or other industrial action; delay or default in freight, shipping or logistics; inability after due and timely diligence to procure materials, accessories, equipment or parts; or any other event to the extent it is beyond the Seller's control or is not occasioned by the Seller's fault or negligence;

PPSA means the *Personal Property Securities Act 2009* (Cth);

Price means the amount payable by the Buyer for the Products and/or Services pursuant to the Quote, or as set out in any invoice issued by the Seller;

Products means the goods to be manufactured by, or sourced by, the Seller and supplied to the Buyer under this Agreement;

Quote means the offer, proposal or quotation issued by the Seller;

Related Entity has the meaning given to that term in the *Corporations Act 2001* (Cth);

Seller means, as the context requires, **Payload Industries Pty Limited (ABN 96 611 121 610)** or **Schlam Engineering Pty Ltd (ABN 74 145 218 944)** or both of them;

Services means any services, other than the manufacture of Products, as set out in a Quote;

Specifications means any technical or quality requirements or standards relating to the Products or Services as included or referred to in, or attached to, any Quote, as amended pursuant to clause 13; and

Warranty Period means twelve (12) months from the date of delivery of the Products.

Agreement

2. By countersigning the Quote, or by issuing a purchase order based on the Quote, the Buyer agrees to the terms of the Agreement.

3. If there is any inconsistency between the parts of the Agreement, the order of priority for interpretation is in the following sequence:

- (a) the Quote, including any Special Conditions;
- (b) these Standard Terms and Conditions; and
- (c) the Specifications.

Payment

4. If the Seller is not paid any part of the Price on or before the Due Date, without prejudice to any other rights or remedies available to the Seller:

(a) the Buyer will be liable for any costs incurred by the Seller as a result of the Buyer's default;

(b) any and all outstanding money payable to the Seller will accrue interest, at the rate equal to the Commonwealth Bank's overdraft reference rates for business transaction accounts available at <https://www.commbank.com.au/business/rates-fees.html>, compounding on a daily basis from the Due Date until payment of the outstanding money is received by the Seller in full; and

(c) the Seller may recover the unpaid amounts together with all costs and interest from the Buyer as a liquidated debt in a court or tribunal of competent jurisdiction irrespective of any claim that the Buyer may have against the Seller whether arising under the Agreement or otherwise.

GST

5. Unless otherwise stated, the Price is exclusive of GST, as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth). If GST is imposed on a supply made pursuant to this Agreement, the Buyer must pay to the Seller, in addition to the GST-exclusive consideration, an amount equal to the GST imposed on the supply.

6. Any GST payable under the Agreement is payable on the day that payment of the Price, or part of the Price, for the supply that has given rise to the obligation to pay GST is required pursuant to this Agreement, or where the consideration is non-monetary, 7 days after the recipient receives a tax invoice for the supply.

7. The Seller will ensure that any invoice for supplies to the Buyer under this Agreement constitutes a tax invoice that should, where applicable, enable the Buyer to claim any tax credits available to it for the GST in respect of the relevant supplies.

Delivery, title and risk

8. The Seller will make best endeavours to deliver Products or complete Services, as the case may be, by the Delivery Date. The Seller makes no guarantees as to the Delivery Date. If the Delivery Date changes, the Seller will advise the Buyer of the new Delivery Date as soon as reasonably practicable.

9. Delivery terms for Products will be EXW Incoterms 2020 unless otherwise agreed by the parties in writing. Risk in Services will transfer to the Buyer upon completion.

10. Title in Products or Services will remain with the Seller until the relevant payment has been received in full from the Buyer.

Specifications

11. The Specifications have been prepared based on information provided by the Buyer, information published by the original equipment manufacturer (**OEM**) of the relevant item for which the Products or Services will be provided, and engineering measurements taken by the Seller.

12. The Seller has relied on the correctness, accuracy and completeness of, and takes no responsibility and has no liability for or in respect of, the information provided by the Buyer or published by the OEM.

13. The Seller reserves the right to make changes to the Specifications and/or the Price if, at any time after acceptance of the Quote by the Buyer:

- (a) any information provided by the Buyer proves to be incorrect, inaccurate or incomplete;

- (b) new information relevant to the Products or Services is published by an OEM or any other person, or becomes known to the Seller; or
- (c) changes to the Specifications constitute, in the Seller's reasonable opinion, improvements to the Products.

Express warranty

14. Unless otherwise set out in the Seller's standard warranty statement relating to the relevant Products or Services, the Seller warrants that:

(a) the Products will conform with the Specifications and be free from defects in material and workmanship during the Warranty Period; and

(b) Services will be performed with due diligence and professionalism in accordance with the Specifications.

15. The Buyer will only be able to claim a breach of warranty:

(a) under clause 14(a) if the defect is detected during the Warranty Period; or

(b) under clause 14(b) if any non-conformance is detected within 30 days of the date of completion of the Services; and

(c) if the warranty claim is received by the Seller in writing within 14 days of the defect or non-conformance arising and sets out reasonable detail of the defect or non-conformance.

16. Subject to the Buyer's compliance with clause 15, the Seller will, at its option and cost and subject to clauses 17 to 23, repair, or resupply the defective Products or reperform the defective Services, in each case or part thereof, during the Seller's normal working hours.

17. Remedy pursuant to clause 16 shall not extend the Warranty Period.

18. The Buyer shall bear the costs of access for the Seller's remedial warranty efforts, including de-installation, decontamination, re-installation, transportation of defective Products to and from the site and freight of parts, materials or equipment.

19. The warranties and remedies are conditioned upon:

(a) proper storage, installation, adjustment, calibration, use, operation, and maintenance of Products or related equipment; and

(b) modification or repair of Products or Services only as authorised by the Seller in writing.

20. The Seller has no obligation or liability under the warranties in clause 14 for defects or non-conformance arising from:

(a) normal wear and tear;

(b) incorrect loading or loading of oversize material contrary to procedures published by the Seller;

(c) installation of a Product other than by the Seller;

(d) the Buyer's unreasonable delay in making the Products or the site available to the Seller for commencement of warranty work;

(e) a defect the fault of a third party that is not discoverable by reasonable care or inspection by the Seller prior to delivery;

(f) Products being used in combination with another item that the Buyer or end user knew, or should reasonably have known, was: defective; not designed for use with the Products; in a damaged state; or was being operated in a way that would reasonably be expected to damage the Products; or

(g) the information provided by the Buyer in relation to this Agreement, including with regard to the Specifications, being incorrect, inaccurate or incomplete.

21. The Seller bears no liability for costs associated with:

(a) replacement of wear and/or impact liner plates;

(b) replacement of ancillary items attached or related to Products, including, but not limited to: pivot pins; bushings hoist pins, rubber pads, shims and related attaching hardware; rock ejector assemblies; mud flap mount brackets; and body safety up cables; or travel, and associated accommodation and sundries, for the Seller employees, or equipment rental charges associated with the performance of warranty work.

22. The warranties provided in clauses 14 to 21:

(a) provide the exclusive remedies for all claims based on failure of or defect in Products or Services, regardless of when the failure or defect arises, and whether a claim, however described, is based on contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability or otherwise; and

(b) to the maximum extent permitted by law, are exclusive and are in lieu of all other warranties, conditions and guarantees whether written, oral, implied or statutory.

23. To the extent that any implied statutory warranty cannot be avoided by law, the Seller's liability for breach of such warranty is limited to the remedies set out in clauses 14 to 21.

Indemnity

24. The Buyer indemnifies the Seller and agrees to keep the Seller indemnified against all claims, losses, actions, damages, costs and expenses (including without limitation the cost of defending and settling any action, claim or demand) that may be made against or incurred by the Seller arising out of a breach of this Agreement by the Buyer, its employees, agents or servants, or use or operation of the Products or the Services by the Buyer or any other person.

25. The Seller is not liable for any loss whatsoever arising from late delivery of the Products or late completion of Services, and accepts no responsibility for any transaction, schedule or project plan of the Buyer that is jeopardised as a result of late delivery.

26. Other than as set out clauses 14 to 23 the Buyer does not have under any circumstances any cause of action against or right to claim or recover from the Seller for, or in respect of, any loss or damage of any kind whatsoever, caused directly or indirectly by:

(a) any defect in design, material or workmanship of, or any other defect whatsoever in, or unsuitability for any purpose of, the Products or Services or in each case any part thereof; or

(b) any default or negligence (or other form of tort) on the part of the Seller or of any employee, contractor or agent of the Seller or of any person for whom the Seller has legal responsibility relating to the supply of, or otherwise concerning the Products or Services or in each case any part thereof.

Insurance

27. During the term of this Agreement, the Seller will hold insurance for: public and general liability in the amount of \$30 million per event and in the aggregate; workers compensation insurance as required by statute; and where Products are in the custody of the Seller, insurance for loss or damage in the amount of the replacement value of such Products.

Limitation of Liability

28. Subject to clause 16, and notwithstanding any provision of this Agreement to the contrary:

(a) the Seller shall not be liable for claims for any special, indirect, exemplary or punitive damages; loss of goodwill, business reputation, future reputation or publicity; loss of use, operation or productivity; increased costs of borrowing; loss of real or anticipated savings or profit; loss of opportunity; loss of business or contract; or any other indirect or consequential loss; and

(b) the Seller's liability under this Agreement is limited in the aggregate to 10% of the Price for the relevant supply, in each case whether the claim arises under breach of contract, indemnity, warranty or tort (including negligence), strict liability, statute, or otherwise.

Intellectual Property

29. Each party shall retain ownership of all intellectual property it had prior to the Agreement. All new intellectual property conceived or created by the Seller in the performance of this Agreement, whether alone or with any contribution from Buyer, shall be owned exclusively by the Seller. Buyer agrees to deliver assignment documentation as necessary to achieve that result.

Confidentiality and Publicity

30. The parties agree that, subject to clauses 31 and 34, any and all Confidential Information must be kept confidential and shall not be disclosed to any other third party without the other party's prior written consent.

31. A party may disclose Confidential Information as required:

- (a) by law or by order of any court or tribunal; or
- (b) by any government agency, stock exchange or regulatory body.

32. On termination of the Agreement or at the direction of either party, each party must return or destroy the other party's Confidential Information in its possession or under its control. The obligations of confidentiality survive any termination or expiry of the Agreement.

33. Each party must, with respect to personal information it receives from the other Party, comply with all applicable privacy laws and any relevant guidelines, directions or policies issued by a government agency.

34. Notwithstanding any other terms of this Agreement, the Buyer agrees that the Seller may reproduce and publish any images which show the Products supplied under this Agreement at or in transit from the Seller's premises, or any publicly available images showing such Products in use or in situ at the Buyer's site, including where such Products carry the Buyer's colours, brand or logo and where the image includes the Buyer's and/or the Seller's personnel, uniforms or business name, for the purpose of promoting the Seller's products, services and business. The Buyer further agrees that such promotional activity may include naming the Buyer as one of the Seller's customers and sharing, with commentary, of any social media posts made by the Buyer which contain relevant images. Notwithstanding the provisions of this clause 34, the Seller will consider in good faith any reasonable request from the Buyer to remove part or all of any specific image from its promotional material where such removal is essential to protecting the business interests of the Buyer or any personal information.

Environmental, Health and Safety

35. Buyer shall maintain safe working conditions at its site, including implementing appropriate procedures regarding hazardous materials and energization and de-energization of power systems (electrical, mechanical and hydraulic) using safe and effective lock-out/tag-out procedures.

36. Buyer shall advise the Seller in writing of all applicable site-specific health, safety, security and environmental requirements and procedures.

37. If the health, safety or security of the Seller's personnel is imperilled by security risks, terrorist acts or threats, hazardous materials or unsafe working conditions, the Seller may evacuate its personnel from Site and suspend the Services until the hazard has been eliminated by the Buyer and any such occurrence shall be an Excusable Delay.

38. Where the Seller's health, safety or security policies differ from those of the Buyer, the stricter regime shall apply to the Services.

Excusable delay

39. Notwithstanding any other provision in this Agreement, the Seller will not be responsible for, nor be deemed to be in default under this Agreement on account of, any delay in its performance under this Agreement due to a Force Majeure Event or pursuant to clause 37.

Termination

40. Should the Buyer:

- (a) fail to perform or observe any of the terms of this Agreement, in particular clauses 50 and 51 and including payment terms;
- (b) being an individual: commit an act of bankruptcy; or

(c) being a company: enter into an agreement or arrangement with its creditors; resolve or be ordered to be wound up; become insolvent (as defined in the *Corporations Act 2001* (Cth)); or have a liquidator, or receiver, appointed over all or any part of its assets,

the Seller may by written notice to the Buyer immediately terminate the Agreement.

41. The Seller may by written notice to the Buyer immediately terminate the Agreement for convenience.

42. Upon termination of this Agreement the Seller may cease the supply of the Products or Services and the Buyer shall pay the Seller any amount:

- (a) due for Products delivered or Services completed as at the date of termination; and
- (b) in the case of termination pursuant to clause 40, claimed by the Seller in respect of any loss or damage suffered.

PPSA

43. In clauses 44 to 49, Financing Statement, Financing Change Statement, Personal Property Securities Register, Security Agreement, Security Interest and Verification Statement are as defined in the PPSA.

44. The Buyer acknowledges and agrees that this Agreement constitutes a Security Agreement for the purposes of the PPSA and creates a Security Interest in all Products that have previously been supplied or will be supplied in the future by the Seller to the Buyer.

45. The Buyer undertakes to:

(a) promptly sign any documents and/or provide any information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to:

- (i) register a Financing Statement or Financing Change Statement in relation to a Security Interest on the Personal Property Securities Register;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 45(a)(i) or 45(a)(ii);

(b) indemnify the Seller for all expenses incurred in registration or correction of documents pursuant to clause 45(a) or in releasing any Products charged thereby;

(c) not register a Financing Change Statement in respect of a Security Interest without the Seller's prior written consent; and

(d) not register, or permit to be registered, a Financing Statement or a Financing Change Statement in relation to the Products in favour of a third party without the Seller's prior written consent.

46. Both parties agree that sections 96, 115 and 125 of the PPSA do not apply to the Security Agreement created by this Agreement.

47. The Buyer hereby waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

48. The Buyer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

49. Unless otherwise agreed by the Seller in writing, the Buyer waives their right to receive a Verification Statement pursuant to section 157 of the PPSA.

Anti-bribery and corruption

50. The Buyer warrants that:

- (a) it did not, prior to the date of this Agreement, and will not in connection in any way with this Agreement, bribe, or attempt to bribe (including, without limitation, any offer of any form of payment, gift or inducement, reward or advantage, whether of money or otherwise); the Seller or any of its employees, agents, representatives or contractors; any public or government officials or employees; public international organisations; political parties; or private individuals or entities;

- (b) it is not the subject of any investigation by a law enforcement agency, or party to any actual or threatened litigation, involving allegations of bribery;
- (c) it is familiar with and will abide by the anti-bribery, anti-corruption and anti-money laundering laws in all countries in which it is incorporated; is established; or does business;
- (d) it will not take or knowingly permit any action to be taken that would cause itself or the Seller to be in violation of any applicable anti-bribery, anti-corruption or anti-money laundering laws;
- (e) if it discovers that it has or may have violated any of the provisions this clause 50, it shall immediately notify the Seller and cooperate with any resulting investigations by the Seller;
- (f) it has established and at all times will maintain and implement such anti-bribery, anti-corruption and anti-money laundering policies and procedures as may be required to ensure its, and its employees', compliance with relevant laws; and
- (g) it obliges its contractors, consultants, agents, distributors and other service providers to maintain and implement similar policies and procedures.

Modern slavery

51. The Buyer warrants and undertakes that:
- (a) no Forced Labour, Slavery or Human Trafficking (as such terms are defined by the International Labour Organisation) is used anywhere in the Buyer's business or in the operations of any of its Related Entities or suppliers; and
 - (b) it has put in place all necessary processes and will take all necessary actions to ensure that the warranties given in this clause 51 continue to be true throughout the term of the Agreement.

Dispute resolution

52. Should any dispute arise out of this Agreement, either Party may notify the other Party in writing specifying particulars of the dispute.
53. The Parties shall make every effort to settle the dispute by negotiation between their representatives within one month of receipt by a Party of notification pursuant to clause 52.
54. If the Parties have not reached agreement by negotiation pursuant to clause 53, the dispute shall be submitted to the Chief Executive Officers of the Parties who will meet and endeavour to achieve settlement of the dispute or agree a means by which the dispute shall be determined, for example by submission to a subject matter expert.
55. If the dispute is not settled within two months of receipt by a Party of notification pursuant to clause 52, or any longer period that may have been agreed by the Parties, the dispute shall be referred to arbitration in accordance with, and subject to, the *Resolution Institute Arbitration Rules 2020*. The arbitration shall be heard by a sole arbitrator. The seat of the arbitration shall be Perth, Western Australia. The arbitrator's decision shall be final and binding on the Parties.

General

56. The provisions of this Agreement supersede, and this Agreement excludes, all prior discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Products or Services whether written or oral, including, without limitation, those relating to the performance of the Products or the results that ought to be expected from using the Products or from the Services.
57. The provisions of this Agreement are express provisions for the rights, obligations and liabilities of the Seller and the Buyer with respect to matters to which the *Civil Liability Act 2002 (WA)* and similar legislation in force in other Australian states and territories applies and, to the maximum extent permitted by law, this Agreement excludes, modifies and restricts the provisions such legislation to the extent of its inconsistency with the Agreement.

58. The Buyer agrees and accepts that the terms and conditions of the *Vienna Convention on Contracts for the International Sale of Goods 1980* and the *Sale of Goods (Vienna Convention) Act 1986 (WA)* do not apply to this Agreement.

59. To maximum extent permitted by law, any terms and conditions that may be implied into this Agreement by the *Sale of Goods Act 1895 (WA)*, or similar legislation in force in any other Australian state or territory, do not apply to this Agreement.

60. The failure of any party to enforce a provision of this Agreement or to exercise any of its rights expressed in this Agreement is not a waiver of such provisions or rights and does not affect the enforcement of this Agreement. No waiver under this clause 60 operates as an estoppel against the party seeking to rely on this clause 60. The exercise by any party of any of its rights expressed in this Agreement does not preclude or prejudice such party from exercising the same or any other rights it may have irrespective of any previous action taken by that party.

61. The Buyer warrants to the Seller that:

- (a) it validly exists under the laws of its place of incorporation or registration and that it has the power to enter into and perform its obligations under this Agreement and to carry out the transactions contemplated by this Agreement;
- (b) it will comply with all laws, including trade controls, applicable to the application, operation, use and disposal of the Products; and
- (c) it will timely obtain, effectuate and maintain in force any required permit, license, exemption, filing, registration and other authorization, including, but not limited to: building and environmental permits, import licenses, customs permits, environmental impact assessments and foreign exchange authorizations, required for the performance of Services or use of the Products at its site.

62. No rule of construction will apply in the interpretation of the Agreement to the disadvantage of one party on the basis that that party put forward or drafted the Agreement.

63. The Buyer may not assign, novate, subcontract or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement, without the prior written consent of the Seller. The Seller may assign, novate or subcontract this Agreement, or any of its rights or obligations under this Agreement, without the consent of the Buyer.

64. Except as expressly stated otherwise in this Agreement, the rights of a party to this Agreement are cumulative and are in addition to any other rights of that party.

65. This Agreement is governed by the law of Western Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.