

## Terms and Conditions

### 1 Interpretation

In these terms and conditions:

- (a) "The Company" means the entity stated in the Application for Credit and any related body corporate as defined in the *Corporations Act 2001* (Cth) and its successors and assigns.
- (b) "Client" means the entity stated in the Application for Credit, its successors and assigns and any other person offering to contract with the Company on these terms and conditions or, where such person is acting in the course of employment, such persons as employer.

### 2 Agents

The Company shall be at liberty to retain any of its authorised agents or any other entity it sees fit and at the sole discretion of the Company and the Client consents to disclosure information about the Client or its contacts to these agents.

### 3 General

These conditions of sale apply to the associated quotation unless specifically varied. No variation to these conditions of sale can be agreed to unless such agreement is in writing and signed on behalf of Delphi Force Measurement Pty Ltd (DELPHI) by a duly authorised person.

### 4 Validity

Unless otherwise stated are ex Gold Coast Store, based on costs of material, labour, variable with changes in foreign exchange or tax rates, custom tariff, marine freight and insurance existing at the date of quotation. Unless otherwise noted in the quotation, prices are subject to variation between date of quotation and time of delivery in which case documentary evidence of price variation will be provided where appropriate. Quotations assume purchaser's co-operation where installation and commissioning applies in providing access and, at his/her expense, services and facilities such as power, associated trades, lifting gear etc. for installation and/or commissioning in normal working hours and if not provided any resulting additional costs, including overtime shall be to purchaser's account.

### 5 Goods and Services Tax (GST)

Delphi prices quoted exclude GST. The purchaser shall pay all and any liability for GST, which will be an addition to the quoted price.

### 6 Warranty

- (a) Delphi warrants that the products are thoroughly examined before shipment and agrees to make good any part that is proved to be defective due to faulty workmanship. Defects or failures in equipment which, under proper use, appear and arise solely from faulty materials or workmanship will be remedied by us free of charge provided the equipment is returned within a period of twelve (12) months from date of delivery. Freight is the responsibility of purchaser. In the case of warranty service to equipment 'on site' or at the purchaser's premises, all travelling and accommodation costs shall be to the purchaser's account. Damage to product including broken or damaged cabling caused by maliciousness, negligence or through changes to electrical configuration of equipment or voltage in excess of rating is specifically excluded from this warranty (the proof to the contrary being the onus of the purchaser). Where this occurs then such warranty real or implied offered by Delphi, shall immediately come to an end.
- (b) Delphi extends such warranties as are offered by the original manufacturer of material. Liability under this warranty applies only to repair or replacement (at the discretion of Delphi) of the original goods supplied. Delphi will not be liable for any damages or delay (general or consequential) whether directly or indirectly caused by the said defect, and shall not be responsible for any work done, or alterations, or addition, made to the products by any other party.

## Delphi Force - Terms and Conditions

### 7 Exclusions:

- (a) Delphi will assume no responsibility or liability for any loss or damage occurring by reason of delay or inability to deliver caused by acts of God, fires, tempest, strikes, lock-outs, accidents, embargoes, delays of carriers, insurrection, not acts of the civil or military authorities, variations in awards, or from any other cause which is unavoidable or beyond our reasonable control and if delays from such causes should occur, our delivery time shall be correspondingly extended.
- (b) For electronic products when cabling is quoted and service, penetrations, cutting, making good, ducting and all mounting accessories are extra to the purchaser's account, while costs of any changes to software programs required after receipt of the purchaser's confirmed requirements are payable by the purchaser.

### 8 Risk

- (a) Should Delphi elect to post any goods or organise delivery of goods, the Client's risk of loss or damage to such goods passes to the Client on the date and at the time that the goods were ordered, and it is the Client's responsibility to ensure these goods are insured and covered for their time in transit.
- (b) Delphi will not be responsible for non-delivery or delay in delivery of any goods where such non-delivery or delay occurs, Delphi may deliver the goods not delivered or delayed at any subsequent time and the Client must accept and pay for them.

### 9 Liability

- (a) Except as otherwise provided, all conditions or warranties expressed or implied or statutory including indirect or consequential, losses of any sort, however occasioned, are expressly excluded. Delphi shall not be liable for delays or prevention in its performance due to causes arising from circumstances beyond its reasonable control, provided always that nothing in this paragraph or elsewhere in this document shall adversely affect the rights of the purchaser under relevant legislation.
- (b) Delphi shall not be under any liability for damage, loss, or expense resulting from the failure to give advice or information, or the giving of incorrect advice or information whether or not due to our negligence or that of our employees. In no event shall any breach of contract or failure of any kind on our part or that of our employees give rise to any liability for loss of revenue or any consequential loss or damage arising from any cause whatsoever.

### 10 Delivery

Quoted delivery or completion times are our best estimates given without engagement and equipment offered from stock is subject to prior sale. Delphi shall not be held liable for any delay or failure to deliver by the time quoted.

### 11 Illustrations, Designs, etc

Delphi may modify its designs at any time or implement changes it considers desirable. Information and technical data provided remains the property of Delphi and may not be handed on to a third party without the written consent of Delphi.

### 12 Insurances

Delphi's responsibility and liability for risks of loss or damage with respect to the goods passes to the purchaser on delivery to the purchaser or his agents or to any other carrier.

### 13 Claims

Claims for shortages or rejection of defects must be made in writing within 14 days after the date of delivery. Equipment shall be returned at purchaser's risk and at purchaser's cost only upon written authorisation. Delphi accept no responsibility for merchandise returned without such authorisation. We shall not issue credit on any goods which have been altered or defaced in any way. Any claim for damages shall be limited to the invoice value of the goods, all claims for consequential damage being excluded. Special items, which are not saleable in the normal course of business, will not be accepted as returns for credit unless authorised by the Company Manager.

### 14 Title of Property

In relation to goods supplied to the Client, ownership and property in the goods vests absolutely with Delphi and does not pass to the Client UNTIL the Client:

- (a) Pays for the goods in full;
- (b) Pays in full all other monies owing or unpaid by the Client to Delphi including monies in respect of goods previously or subsequently supplied to the Client by Delphi.

In relation to goods supplied to the Client for which payment in full has not been received:

- (a) The relationship between the Client and Delphi shall be fiduciary;
- (b) The Client will hold those goods as bailee for Delphi;
- (c) Where the Client sells those goods, the Client does so as fiduciary agent of Delphi;
- (d) When new goods or objects are formed with Delphi's goods into other products or the goods are affixed to other objects, Delphi will be given full ownership of such new goods or objects;

## Delphi Force - Terms and Conditions

- (e) Where the goods are disposed of, the monies resulting from the disposal and all other proceeds received in respect of the goods, including insurance proceeds will be kept separately in trust for Delphi;
- (f) Where the goods are disposed of, the Client may only dispose of the goods in the ordinary course of its business on commercially reasonable terms;
- (g) The Client undertakes that until it delivers the goods to a third party, it will store the goods on its premises separately from its own goods, or those of any other person, and in a manner which makes the goods readily identifiable as Delphi's goods.

### 8 Access

The Client irrevocably permits Delphi or any person authorised by Delphi in writing, upon giving reasonable notice to enter the Client's premises or at premises where the goods are reasonably believed by Delphi to be held on the Client's behalf for the purpose of examining or recovering the goods. The Client also agrees to indemnify and hold Delphi harmless for reasonable costs of removal, enforcement, and legal action in respect of the removal of any goods, the subject of this Agreement.

### 9 Transactions contemplated by this Agreement

Delphi's tender of delivery of goods and services under this Agreement is a condition of the Client's duty to accept the goods or services provided and, unless otherwise agreed, the Client's duty to pay for them.

### 10 Disputes

If the Client disputes any goods sold or services supplied by Delphi are faulty or defective or disputes the invoices Delphi has issued, the Client must notify their reasons in writing to Delphi within 14 days of the Invoice date, failing which the Client loses any right to dispute the quality of the goods, services or quantum of.

### 11 Payment

The Client agrees to pay all amounts due in clear funds within Delphi's agreed timeframe but no later than 30 days from the date of invoice. The Client agrees that if it fails to pay in accordance with this clause, Delphi may:

- (a) Charge a late payment fee of 5% on all amounts paid after the due date;
- (b) Charge interest on debts at 20% per annum from time to time;
- (c) Charge a dishonour handling fee in the amount of \$95.00;
- (d) Recover all collections costs and expenses incurred in collecting overdue accounts on an indemnity basis;
- (e) Withhold supply;
- (f) Sue for the money owing on the goods or services provided.

In the event where this agreement has been entered into by more than one party each party shall be jointly and severally liable for any amounts overdue.

### 12 Default

- (a) If the Client:
  - i) Fails to pay for any goods or services on the due date; or
  - ii) Otherwise breaches this agreement and failed to rectify such breach within seven days notice; or
  - iii) Cancel delivery of goods or services; or
  - iv) Commits an act of bankruptcy or allows a trustee in bankruptcy or receiver and manager to be appointed to the Client or any of its property; or
  - v) Allow a judgment or order to be enforced or become enforceable against the Client's property; or
  - vi) Permits proceedings to be commenced to wind the Client up or controller, receiver, administrator, liquidator or similar officers appointed to the Client in respect of any part of its property;

Then Delphi may enter upon the Client's premises (doing all that is necessary to gain access) where goods supplied under this contract are situated at any time and re-take possession of any or all of the goods Delphi has supplied to the Client and:

- i) Resell the goods concerned;
  - ii) Terminate the agreement; and
  - iii) Sue for any monies owing.
- (b) The Client will be in default if the Client does not pay any monies payable when called upon so to do the Client and the Guarantor jointly and severally acknowledge and agree that Delphi is authorised to contact a credit reporting agency throughout the term of the Agreement to obtain a report about the credit worthiness of either the Client or the Guarantor or both.
- (c) The Client and the Guarantor jointly and severally authorise Delphi to engage in the exchange of information with a credit reporting agency or with other such parties as are necessary to give effect to the contract and to the ongoing relationship between the parties hereto.

## Delphi Force - Terms and Conditions

- (d) Delphi reserves the right to report a Client's delinquent account to a credit reporting agency should payment remain outstanding for more than 60 days. In addition Delphi may refer the outstanding account for debt collection or issue legal proceedings to recover any outstanding invoices. Should an account be referred for debt collection the Client acknowledges and agrees to pay debt collection charges to be calculated at not less than 20% plus GST and will be incurred on the day Delphi refers the matter to their nominated debt collection agency. The client shall also be liable for interest and all legal recovery costs associated with such action on a solicitor and own client or indemnity cost basis.

### 13 Right to amend terms and conditions

Delphi reserves the right to amend terms and conditions of this agreement by giving the Client notice in writing of the amended terms and conditions to the Client's address as specified on the face of this agreement or as notified by the Client from time to time. The Client is deemed to accept any amended Terms and Condition unless it notifies Delphi in writing within seven days of its objection to the proposed amendment to the terms and conditions.

### 14 Cancellation of Orders

Orders may only be cancelled prior to delivery with the written consent of Delphi. Such consent if given will be subject to reimbursement for all actual and prospective loss, damages and expenses incurred by Delphi in the preparation and procurement of products and/or services in fulfilment of the order.

### 15 Purchaser's Goods Held at our Premises

Where Purchaser's goods are held at our premises for testing, repair, inspection, manufacture or for any other reason, all such goods are held at the risk of the purchaser. While we will take all care we will not accept responsibility for any loss or losses.

### 16 Testing of Purchaser's Goods

Where we test purchaser's goods we take all due care, but do not accept liability for damage incurred either to the goods, or, where testing occurs at purchaser's or third party premises, to the premises, plant, stock, equipment or other property, nor do we accept liability for injury incurred to employees or contractors of the purchaser or to third parties, as a result of such tensile testing.

### 17 Set-off

The Client agrees that:

- (a) Delphi may set-off any credit amount that Delphi owes to the Client against any debt due by the Client to Delphi at Delphi's sole discretion;
- (b) The Client is not entitled to withhold payment of any money in respect of any alleged set-off or claim the Client might have against Delphi.

### 18 Severance and Waiver

If any part of this agreement is found to be void, unlawful, or unenforceable then that part will be deemed to be severed from the agreement and the severed part will not affect the validity and enforceability of any remaining provisions. Any waiver of Delphi's right under this agreement must be in writing and signed by an authorised representative of Delphi.

### 19 Jurisdiction

The agreement shall be deemed to have been made in Queensland and shall be interpreted in accordance with the Laws of Queensland, Australia, and the parties submit to the exclusive jurisdiction of the Queensland Courts.