

Standard Terms and Conditions

1. DEFINITIONS

The **Act** means the Competition & Consumer Act 2010.

Acubis means Acubis Technologies Pty Limited ACN 163 434 286.

Claim means any claim, demand, action or proceeding in relation to the performance or non-performance of the Goods and/or Services or any other obligation under this Contract whether arising under the law of contract, equity, tort (including negligence), strict liability, breach of statutory provision or otherwise.

Contract means the contract for the supply of the Goods and/or Services by Acubis to the Customer formed upon acceptance by Acubis of the Purchase Order in accordance with clauses 2.2 and 2.5 comprising of the Proposal (if there is one), the Purchase Order, these Terms and Conditions and any other provisions that Acubis specifically agrees in writing are to form part of the Contract.

Customer means the entity to which Acubis is providing Goods and/or Services under the Contract, being the party named in the Proposal.

Customer Provisions means the provisions of any of the Customer's terms of trade or other standard provisions provided by the Customer or on its behalf, whether or not those provisions are attached to or referred to in a Proposal, Purchase Order or any other instrument and whether or not they are received by Acubis before the Customer has viewed these Terms and Conditions.

Goods means the goods (including hire equipment) supplied under the Contract to the Customer by Acubis, its servants, agents or subcontractors.

Hirer means any person, firm, corporation or entity that hires equipment from Acubis and includes its employees, agents, servants, contractors or any other person to whom the equipment is entrusted.

Hire Period means the period of Goods hire commencing the later of the commencement date and time on the Contract or the date and time the equipment is delivered to the Hirer, and shall cease at the later of when the equipment is returned to Acubis, or on Acubis repossessing the equipment pursuant to the Contract.

Intellectual Property includes all copyright (including rights in relation to software and broadcasts), all rights in relation to inventions (including patent rights), registered and unregistered trade marks (including service marks), registered and unregistered designs, circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, information and communication technology (ICT), literary or artistic fields.

Prescribed Terms means any terms, conditions and warranties which the law (including the Act) expressly provides may not in respect of the Contract be excluded, restricted or modified, or may be excluded, restricted or modified only to a limited extent.

Proposal means the proposal for Goods and/or Services provided by Acubis to which these Terms and Conditions are normally attached or, if relevant in the context that part of the proposal accepted by the Customer in writing, and includes only quotation, cost estimate or rate schedule issued by Acubis in respect of the Goods and/or Services.

Purchase Order means the purchase order issued by the Customer in respect of the Goods and/or Services, or (where relevant in the context) that part of the purchase order accepted by Acubis in accordance with clause 2.4. This does not include any Customer Provisions printed on or referred to in the purchase order unless otherwise agreed in writing by Acubis.

Services means the services supplied under the Contract to the Customer by Acubis, its servants, agents or subcontractors and includes goods or services that are ancillary to any services supplied under the Contract.

2. PROPOSAL AND PURCHASE ORDERS

2.1 The Proposal is valid for the period stated in the Proposal or as amended by written agreement between the Customer and Acubis.

2.2 No Proposal is binding on Acubis unless the Customer issues a Purchase Order to Acubis based on that Proposal and Acubis accepts that Purchase Order in writing.

2.3 If the Customer has not issued a Purchase Order on or before the date that the Proposal expires, the Proposal may be subject to variation by Acubis.

2.4 Acubis may reject a Purchase Order in whole or in part. If Acubis rejects only part of a Purchase Order, the part not so rejected forms part of the Contract.

2.5 Once a Purchase Order has been accepted by Acubis in writing, a Contract is formed in respect of the provision of the Goods and/or Services by Acubis to the Customer and these Terms and Conditions apply to the Contract.

2.6 All information and data contained in general product documentation and price lists, whether in electronic or any other form, are binding only to the extent that they are by reference expressly included in the Proposal.

3. CUSTOMER CANCELLATION

3.1 Unless otherwise agreed in writing, the Customer may not cancel a Purchase Order that has been accepted by Acubis.

3.2 If Acubis agrees to the cancellation of a Purchase Order, the Customer will be liable for any Acubis fees and charges incurred prior to the date of cancellation plus 10% restocking fee.

3.3 If a restocking fee is payable to a third party supplier for the return of non-stock items, Acubis will pass this fee to the customer in addition to 3.2 above.

4. DURATION OF THE CONTRACT

4.1 The period of time to perform the Contract or any part thereof (Duration) is stated in the Proposal or, if there is no Proposal, as otherwise agreed in writing by Acubis and the Customer.

4.2 Unless otherwise agreed in writing by Acubis, the Duration is provided as an estimate only and Acubis will not be liable to the Customer for any loss or damage suffered by the Customer if the Goods and/or Services or any part thereof are not completed by the time of expiration of the Duration.

4.3 The Duration may be varied by written agreement between Acubis and the Customer. The Duration may also be varied by Acubis providing not less than 30 days written notice to the Customer.

5. FEES

5.1 Unless otherwise agreed in writing, the fees payable by the Customer to Acubis for the Goods and/or Services (the Fees) are as stated in the Proposal or, if there is no Proposal, as otherwise stated in writing by Acubis, and are in Australian dollars.

5.2 Unless otherwise stated in these Terms and Conditions or in writing by Acubis's authorised representative, all Fees stated in the Proposal or otherwise are exclusive of Goods and Services Tax (GST) and all other taxes, freight charges, agent's charges and any other charges, duty or impost (Additional Imposts).

5.3 In addition to the Fees, the Customer must pay to Acubis all GST and Additional Imposts in respect of the Goods and/or Services.

5.4 If a legislative requirement comes into effect after the commencement of the Contract and necessitates a change to the Goods and/or Services then Acubis will be entitled to recover from the Customer any additional costs associated with the change.

6. PAYMENT

6.1 Acubis will submit invoices using one or a combination of the following approaches:

a) on a monthly basis (if applicable) whereby each invoice details the Goods and/or Services provided (or part thereof) during the period; or
b) on completion of the Goods and/or Services.

6.2 The Customer must pay Acubis in full all invoiced amounts without right of set-off, within 30 days of date of the invoice.

6.3 Acubis may require full or part payment for the Goods and/or Services prior to the delivery of Goods or performance of the Services or completion of the Services.

6.4 In addition to all other rights and remedies available to Acubis under the Contract and at law, if the Customer fails to pay to Acubis all monies as and when due under the Contract, Acubis may in its sole discretion:

a) suspend the provision of credit until all amounts are paid in full;
b) vary or cancel any credit facility it makes available;
c) charge interest on any overdue amount at the annual rate of 3% above the prevailing base lending rate provided by Acubis's principal banker.
d) refuse further supply under the Contract: and/or
e) terminate the Contract without notice.

6.5 The Customer must indemnify and pay Acubis for all and any costs and expenses incurred by Acubis in attempting recovery and collection of outstanding monies payable to Acubis under the Contract.

7. INSPECTION AND ACCEPTANCE

7.1 If Acubis supplies only goods to the Customer under the Contract, the Customer:

a) must inspect all goods upon their delivery to the Customer, and
b) if the Customer considers that any goods are defective or do not comply with the Contract, must notify Acubis of this within 7 days of delivery of the goods, which notice must also set out how the goods are defective or do not comply with the Contract.

7.2 Acceptance tests provided for in the Contract shall, unless otherwise agreed, be carried out at the place of manufacture during normal working hours. If the contract does not specify the technical requirements, the tests shall be carried out in accordance with general practice in the appropriate branch of industry concerned in the country of manufacture.

7.3 If the Customer does not comply with clause 7.1 then, to the extent permitted by the law, the goods will be deemed accepted by the Customer.

8. UNAVOIDABLE DELAY

8.1 Neither party is liable for any delay in performing or failure to perform any of its obligations under the Contract (excluding any obligation of the Customer to pay when due the fees for Goods and / or Services rendered by Acubis), whilst and to the extent such delay or failure is due to an Unavoidable Delay.

8.2 Without limiting the generality of clause 8.1 and subject to clause 4.2, if Acubis is or will be delayed in carrying out the Goods and/or Services or any part thereof by an Unavoidable Delay, the time for carrying out the Goods and/or Services or relevant part thereof will be extended by the extent of the delay. If the cause of the delay is an act or omission of the Customer or an employee, consultant (other than Acubis), contractor, or agent of the Customer, the Customer must pay Acubis such extra costs as are necessarily incurred by Acubis by reason of the delay.

8.3 If a delay or failure by a party to perform its obligations due to an Unavoidable Delay exceeds 60 days, either party may, by written notice delivered by registered mail, immediately terminate the Contract.

8.4 For the purposes of this clause 8, Unavoidable Delay means a circumstance beyond the reasonable control of the party claiming the benefit of the clause which results in that party being unable to observe or perform on time any of its obligations under the Contract. Such circumstances include, without limitation, acts of God, acts of Government, war or other hostility, national or international disaster, fire, explosion, equipment or power failure, strike or lockout, death, injury or illness to key personnel or inability to obtain necessary supplies.

9. WARRANTY

9.1 The only warranties, conditions or guarantees that apply to any Service are those provided or implied under any Prescribed Terms (if any) together with all warranties expressly stated in the Contract or, if goods are also supplied under the Contract, those that are provided by the manufacturer or supplier of those goods. All other warranties, conditions or guarantees in respect of any Service or their supply, whether express or implied, are excluded.

9.2 Acubis warrants to the Customer that all Services will be provided with due care and skill, and Goods shall be free of any material defects arising from faulty material, workmanship or design.

9.3 On enquiry, Acubis will notify the Customer of any applicable manufacturer or supplier warranty in relation to any goods supplied to the Customer.

9.4 The Prescribed Terms may imply warranties, guarantees or conditions or impose obligations upon Acubis that cannot be excluded, restricted or modified except to a limited extent, these Terms and Conditions must be read subject to those Prescribed Terms.

9.5 Except if otherwise stated in the Proposal and except as provided in any Prescribed Terms, each warranty, guarantee or condition provided in respect of any goods or services supplied a required to be supplied under the Contract shall expire on the date described below in this clause, after which the Customer may not make any claim under any such warranty, guarantee or condition or in respect of any defect in any goods or services:

- a) In respect of services, twelve months after the services are supplied to the Customer and
- b) In respect of goods (including components, materials or plant) manufactured and/or supplied by Acubis, twelve months from installation or delivery to the Company (whichever period expires first) and
- c) In respect of goods manufactured and/or supplied by a third party, when the warranty, guarantee or condition provided by the manufacturer or supplier of those goods expires.

10. LIMITATION OF LIABILITY

10.1 Despite anything to the contrary herein contained but subject to the provisions of any Prescribed Terms, Acubis's liability in respect of any Claim arising in any way out of the Contract or its performance or from any failure to perform the Contract including (without limiting the generality of the foregoing) for breach of any condition, warranty or guarantee contained in the Contract or in any Prescribed Term implied into or applying to the Contract and whether that liability arises under contract, tort (including negligence), breach of statutory duty or otherwise, is limited as follows:

- a) if any guarantee under the Act is applicable to any good or service supplied by Acubis and Acubis's liability is due to a failure to comply with the guarantee and such failure cannot be remedied or is a major failure as defined in the Act (each such failure hereafter referred to as a Relevant Failure), Acubis's liability is as stated in the Act in respect of that Relevant Failure;
- b) if the liability is due to a failure to comply with any condition, warranty or guarantee in respect of any good or service supplied by Acubis under the Contract and such failure is not a Relevant Failure, Acubis's liability is limited as follows in respect of such failure: (i) if the failure is in respect of goods, Acubis's liability is limited to replacement of the goods or the supply of equivalent goods, the repair of the goods, payment of the cost of replacing the goods or of acquiring equivalent goods, or payment of

the cost of having the goods repaired as determined by Acubis in its sole discretion; and (ii) if the failure is in respect of services, Acubis's liability is limited to the supply of the services again or payment of the cost of having the services supplied again, as determined by Acubis in its sole discretion;

c) in respect of all other liability (if any), Acubis's liability is limited in the aggregate to the lesser of: (i) the total Fees paid to Acubis under the Contract in the twelve month period prior to the date of Claim, or (ii) AUD\$10,000.

d) In all circumstances, Acubis', liability, if any, shall be absolutely extinguished after the expiration of twelve months from the date of Acubis's invoice in respect of the service.

10.2 Despite any other provision of the Contract to the contrary, to the extent permitted by law (and in particular subject to any Prescribed Terms), in no event will Acubis or its subcontractors or suppliers be liable in respect of any Claim for any loss of profits or anticipated profits, loss by reason of plant shutdown, non-operation or increased expense of operation, service interruptions, cost of purchased replacement power, claims of customer, cost of money, loss of use of capital or revenue, or for any punitive, exemplary, special, incidental or consequential loss or damage or the like.

11. TITLE & RISK

11.1 If any Goods are supplied under the Contract, risk of loss of or damage to those Goods will pass to the Customer upon delivery of the Goods to the Customer or when the Customer takes custody or control of the Goods.

11.2 Title in the Goods will not pass to the Customer until the whole of the Fees and any other charges payable under the Contract are paid by the Customer to Acubis.

12. DAMAGE & LOSS OF HIRE EQUIPMENT

12.1 During the Hire Period, the Hirer is responsible for any loss, including where the equipment is damaged or allegedly stolen, whether such loss or damage is caused by the negligence of the Hirer or for any other reason whatsoever.

12.2 Where return of the equipment to Acubis has been agreed, the Hirer's responsibility in this regard shall continue until the equipment has either been picked up by or delivered to Acubis.

12.3 Where equipment is lost or damaged during the Hire Period, the Hirer agrees to indemnify Acubis for any part of the cost of repairs to, or replacement of, the equipment.

12.4 The Hirer acknowledges that:

- a) Where equipment is damaged, the decision to either repair or replace the equipment is of the absolute discretion of Acubis and will be made on reasonable commercial and safety grounds; and
- b) Where a replacement of the equipment is necessary (due to other loss or damage), the Hirer agrees to indemnify Acubis for the costs of the replacement. The Hirer acknowledges that: (i) Acubis will, in the first instance, use its best endeavours to replace the equipment with another item of equipment of similar age and wear. However, for reasonable, practical and commercial reasons, Acubis may replace the equipment on a new-for-old basis. (ii) Where Acubis exercises its discretion in this regard, the replacement on a new-for-old basis is an accurate measure of what is required to return Acubis to the position it was in prior to the equipment being lost or damaged, and is not a penalty; and (iii) Acubis will not accept the Hirer sourcing replacement equipment, save for the Hirer providing brand new equipment of equivalent quality, make and specification.

c) Where there is a delay in the lost or damaged equipment being repaired or replaced, the Hirer agrees to indemnify Acubis for the lost hire opportunity during the period that Acubis is unable to hire the equipment to other parties.

12.5 Where the equipment is not returned to Acubis within 2 days of the expiration of the Hire Period, Acubis may appropriate any deposit paid by the Hirer to mitigate any damages claim that Acubis may incur and Acubis shall be of liberty to immediately notify the Police of the circumstances and may pursue criminal or civil action as it deems necessary in the circumstances. Acubis is not liable for any loss, damage, injury, fines or costs sustained by the Hirer arising from such action.

13. PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)

13.1 The Hirer consents to Acubis affecting and maintaining a registration on the register in relation to any security interest contemplated or constituted by the Contract and agrees to sign any documents and provide any assistance and information to Acubis required to facilitate the registration and maintenance of any security interest. The Hirer waives any right to receive notice of a verification statement in relation to any registration in respect of the equipment.

13.2 The Hirer undertakes to:

- a) do anything that is required by Acubis so that Acubis acquires and maintains one or more perfected security interest under the PPSA in respect of the equipment and its proceeds, to register a financing statement or financing change statement; and to ensure that Acubis's security position, rights and obligations are not adversely affected by the PPSA;

b) not register a financing change statement in respect of a security interest contemplated or constituted by the Contract without prior written consent from Acubis; and

c) not register or permit to be registered a financing statement or financing change statement in relation to the equipment in favour of a third party without prior written consent from Acubis.

13.3 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising under or connected with these terms and:

a) Section 115(1) of the PPSA allows for the contracting out of provisions of the PPSA, the following provision, of the PPSA will not apply and the Hirer will have no rights under them, Sections 95 (to the extent that it requires the secured party to give notices to the grantor: 96; 118 (to the extent that it allows a secured party to give notices to the grantor: 121(4); 125; 130; 132(3)(d); 132(4); 135; 142; and 143; and

b) Section 115(7) of the PPSA allows for the contracting out of provisions of the PPSA, the following provisions of the PPSA will not apply and the Hirer will have no rights under them; Sections 127; 129(2) and (3); 130(1); 132; 134(2); 135; 136(3), (4) and (5); and 137.

13.4 Unless otherwise agreed and to the extent permitted by the PPSA, both the Hirer and Acubis agree not to disclose information of the kind referred to in section 275(1) of the PPSA to an interested person, the Hirer waives any right it may have had but for this clause under section 275(7)(c) of the PPSA to authorise the disclosure of the above information.

13.5 For the purposes of section 20(2) of the PPSA, the collateral is equipment sold by Acubis to the Hirer from time to time. These terms are a security agreement for the purposes of the PPSA.

13.6 Acubis may apply amounts received in connection with these terms to satisfy obligation secured by a security interest contemplated or constituted by these terms in any way Acubis determines in its absolute and sole discretion.

13.7 The Hirer agrees to notify Acubis in writing of any change to the details as set out in the credit application within seven days of such change.

14. DISPUTE RESOLUTION

14.1 If a dispute arises out of or in connection with the Contract then either party may send, by registered mail, to the other party a written notice of dispute adequately identifying and providing details of the dispute.

14.2 Within 14 days after service of a notice of dispute, representatives from each party with authority to agree to a resolution of the dispute will confer at least once to attempt resolution of the dispute.

14.3 In the event the dispute cannot be resolved, or at any time either party consider, that the other party is not making reasonable efforts to resolve the dispute, either party may send, by registered mail, written notice to the other party a notice referring the dispute to arbitration.

14.4 If within 14 days of a referral to arbitration the parties have not agreed upon an arbitrator, the arbitrator will be nominated by the President of the Institute of Arbitrators & Mediators Australia. The arbitration will be conducted in accordance with the rules 5 -18 of the Rules of The Institute of Arbitrators & Mediators Australia for the Conduct of Commercial Arbitrations.

15. SUSPENSION AND TERMINATION

15.1 In the event that the Customer commits a substantial breach of its obligations under the Contract then Acubis may, at its sole discretion, immediately suspend the provision of the Goods and/or Services.

15.2 Failure to make payment when due under the Contract will be a substantial breach of the Contract.

15.3 The Contract may be terminated immediately at the option of Acubis if:

a) the Customer commits a substantial breach of its obligations under the Contract and fails or refuses to remedy such breach within 14 days after receiving written notice of the breach, sent by registered mail; or
b) a receiver, manager, administrator, provisional liquidator, liquidator or trustee in bankruptcy is appointed to all or any substantial part of the assets and undertakings of the Customer.

15.4 Acubis will cease to provide the Goods and/or Services to the Customer upon termination of the Contract.

15.5 Termination of the Contract shall be without prejudice to any claim which either party may have against the other in respect of any breach of the Contract which occurred prior to the date of termination.

16. INTELLECTUAL PROPERTY

16.1 Unless otherwise agreed in writing by Acubis, copyright in all drawings, reports, specifications, calculations, code and other documents provided by Acubis in connection with the supply of Goods and/or Services shall remain vested in Acubis.

16.2 Acubis grants to the Customer a licence to use the supplied information referred to in clause 16.1 for the purpose of completing the work or project for which the Goods and/or Services were supplied. However, the Customer must not use nor make copies of such supplied information in connection with any other work or purpose except with the prior written approval of Acubis.

16.3 Acubis may with the consent of the Customer publish, either alone or in conjunction with others, articles, photographs, and other illustrations relating to the work for which the Goods and/or Services are or were supplied.

16.4 If during the course of providing the Goods and/or Services Acubis develops, discovers or first reduces to paper a concept, product or process which is capable of being patented, then such concept, product or process shall be and remain the property of Acubis and the Customer must not use, infringe or otherwise appropriate the same without first obtaining written consent of Acubis.

16.5 Each licence provided under this clause is royalty free, non-exclusive and non-transferrable and the Customer must not sub-licence the licence without the written consent of Acubis.

16.6 The Customer agrees to indemnify Acubis in respect of and must keep it harmless from all liabilities, damages, costs and expenses which Acubis may suffer or incur as a result of information supplied by the Customer or work done in accordance with the Customer's specifications or as a result of the Customer changing any work conducted by or supplied by Acubis or arising due to the combination or use of products by the Customer with other equipment, parts or software not supplied by Acubis and which results in the infringement of any Intellectual Property of any person.

17. WORK HEALTH AND SAFETY (WH&S)

17.1 Prior to any Acubis representative entering a Customer site, the Customer will ensure that the Acubis representative is notified of the Customer's WH&S policies and risks which may be applicable whilst at the site and receives all proper training, instruction and supervision in respect of such policies, risks and emergency procedures.

18. CONFIDENTIALITY

18.1 The terms of the Contract are confidential and not to be disclosed by either party without the prior written consent of the other party.

18.2 Each party agrees to keep in confidence and not use any confidential information disclosed by the other party, except for the purpose stated, without the prior written consent of the other party.

18.3 Where required the parties agree to enter into an additional confidentiality agreement.

19. SEVERABILITY

19.1 If any provision of the Contract is illegal, void, invalid or unenforceable for any reason all other provisions which are self-sustaining and capable of enforcement will, to the maximum extent permitted by law, be and continue to be valid and enforceable.

20. COMPLIANCE WITH LAWS, CODES & STANDARDS

20.1 When supplying the Goods or performing the Services, Acubis will comply with the requirements of all applicable federal, state and local laws, rules and regulations.

20.2 Notwithstanding clause 20.1 or any other provisions of this Contract, the Customer will be responsible for and must procure all necessary permits, licenses, exemptions, authorisations and approvals necessary to allow Acubis to lawfully supply the Goods or perform the Services.

21. GENERAL

21.1 The Contract (including any right or benefit under it) must not be assigned by the Customer without the prior written consent of Acubis.

21.2 Acubis may amend these Terms and Conditions at any time by giving the Customer notice by mail or email. By continuing to place Purchase Orders for Goods and/or Services, the Customer will be deemed to have accepted the revised Terms and Conditions.

21.3 The Contract (as defined in clause 1) constitutes the entire agreement between Acubis and the Customer in regard to the Goods and/or Services and their supply by Acubis to the Customer and supersedes all prior understandings, arrangements and agreements.

21.4 Any Customer Provisions do not form part of the Contract unless the Customer Provisions are agreed to in writing by an authorised representative of Acubis.

22. GOVERNING LAW

22.1 The Contract is governed by and must be construed in accordance with the laws of the State of New South Wales and the parties submit to and accept the nonexclusive jurisdiction of the Courts of that State.