

TERMS AND CONDITIONS OF SALE

1 General

- 1.1 Unless inconsistent with the context of these Terms and Conditions, the following definitions shall apply:
- ADAPT AUSTRALIA** means ADAPT Australia Pty. Ltd. (ABN 48 056 872 970), including its officers, employees and agents;
- Consideration** means the amount payable by the Purchaser to ADAPT AUSTRALIA for the supply of Equipment and / or Services as referred to in the Contract;
- Contract** means the contract between ADAPT AUSTRALIA and the Purchaser for the purchase of Equipment and / or Services consisting of the Offer, these Terms and Conditions, any amendments to the Offer agreed between the parties in writing, the Order and the Order Confirmation;
- Equipment** means the goods to be delivered by ADAPT AUSTRALIA to the Purchaser as specified in the Contract;
- Force Majeure Event** means any event beyond the reasonable control of a party, including without limitation strike, lock out, raw material shortage, breakdown of plant, transport or equipment;
- GST** has the same meaning as in A New Tax System (Goods and Services Tax) Act 1999;
- Insolvency Representative** includes but is not limited to a receiver, receiver and manager, administrator, controller, liquidator, provisional liquidator, trustee or similar person;
- Offer** means the quotation provided by ADAPT AUSTRALIA to the Purchaser supply of the Equipment or Service in return for payment of the Consideration;
- Order** means an order for purchase of the Equipment and / or Service by the Purchaser;
- Order Confirmation** means confirmation by ADAPT AUSTRALIA of the Order; and
- Purchaser** means the person referred to in the Contract as the purchaser of the Equipment and / or Service;
- Scope of Supply** means the Equipment, the Service and any disbursements incurred by ADAPT AUSTRALIA in supplying the Equipment or the Service to the Purchaser as specified in the Contract; and
- Service** means any service to be provided by ADAPT AUSTRALIA to the Purchaser as specified in the Contract;
- Tooling** means any tooling supplied by ADAPT AUSTRALIA to the Purchaser from time to time on a loan or hire basis.

- 1.2 **Precedence**
If there is any inconsistency between the documents comprising the Contract, the following order of precedence shall apply (with the first document having the highest priority):
- the Order Confirmation (if any);
 - any amendments to the Offer agreed between the parties in writing;
 - the Offer;
 - these Terms and Conditions.
- 1.3 **Variation of Conditions**
Notwithstanding any purported acceptance by the Purchaser that may contain any provision inconsistent with these Terms and Conditions, any contract shall be subject to these Terms and Conditions unless ADAPT AUSTRALIA expressly agrees in writing to any variation thereof.
- 1.4 **Additional Documentation or Verbal Matter to be Confirmed**
No documentation, correspondence or verbal agreement shall form part of, affect or modify any aspect the Offer or the Contract unless otherwise accepted and confirmed by ADAPT AUSTRALIA in writing.
- 1.5 **Severance**
If a provision or part of any provision of the Contract is invalid, illegal, or unenforceable, such provision or part thereof shall be severed here from and the remainder shall continue in full force.
- 1.6 **Separable Portions**
The provisions of these Terms and Conditions shall apply to any separable portion or portions of the Equipment.

2 Quotation and Order

- 2.1 **Validity of Quotation**
Unless previously revoked by written notification to the Purchaser, the Offer shall remain valid for the period stated in the Offer or, if no period is stated, then for thirty (30) days from date of the Offer.
- 2.2 **Variation in the Scope of Supply**
The Consideration is based on the Scope of Supply. Should there be any variation in the Scope of Supply, then ADAPT AUSTRALIA reserves the right to amend the Consideration accordingly.
- 2.3 **Cancellation, Variation or Suspension**
A Contract maybe cancelled, varied or suspended by the Purchaser only by notice in writing and only if such notice is accepted in writing by ADAPT AUSTRALIA. In the event of such cancellation, variation or suspension the Purchaser shall compensate ADAPT AUSTRALIA for any costs or loss incurred including but not limited to loss of profit.

3 Specifications and Drawings

- 3.1 **Not Part of the Contract**
Unless expressly incorporated in the Offer all descriptive and shipping specifications, drawings, dimensions and weights submitted with the Offer are approximate only. Descriptions, illustrations and data contained in catalogues, price lists and other advertising material do not form part of the Contract unless expressly agreed in writing by ADAPT AUSTRALIA.
- 3.2 **Certified Drawings**
After acceptance of an order ADAPT AUSTRALIA shall provide on request such certified drawings as in ADAPT AUSTRALIA's opinion are reasonable or necessary.

3.3 Confidential Information

All drawings, specifications and other written information, samples and the like provided by ADAPT AUSTRALIA shall be regarded as confidential and shall not be disclosed to a third party except with the prior written consent of ADAPT AUSTRALIA, unless it is already publicly known

3.4 Approval of Drawings

Drawings, or other information, requiring the Purchaser's approval shall be approved, amended or rejected and returned to ADAPT AUSTRALIA within fourteen (14) days from the date of receipt or any other such period as may be agreed in writing. Any delay beyond this period shall be grounds for an extension of time for completion of the Contract.

3.5 Incorrect information

The Purchaser shall be responsible for and bear the additional costs associated with any discrepancy, error or omission in any drawings, specification or other information supplied or approved by him.

4 Inspections and Tests

Where inspections and tests are performed, they will be in accordance with the Equipment manufacturer's standard practice and will be carried out at the place of manufacture or at some other place at ADAPT AUSTRALIA's option. The cost of these tests shall be paid by ADAPT AUSTRALIA. Any further tests or witness tests required by the Purchaser will be paid by the Purchaser.

5 Delivery

5.1 Time

Unless expressly stated in the Contract, any delivery time or date stated by ADAPT AUSTRALIA is an estimate only. ADAPT AUSTRALIA will deliver the Equipment to the delivery site agreed with the Purchaser and the Purchaser shall be responsible for unloading the Equipment. Unless expressly stated in the Contract, any delivery shall be in accordance with the Delivered Duty Paid rule of the International Chamber of Commerce's Incoterms 2010 (as amended from time to time).

5.2 Compensation for Delay

If the delivery time or date is expressly stated in the Contract and delivery of the Equipment is delayed due to a non Force Majeure Event and the Purchaser suffers loss due to the delay, then the Purchaser is entitled to compensation for each completed week of delay to the payment of liquidated damages at a rate of 0.25% per week, but not more in aggregate than a total of 5%, of the Consideration. The compensation will be limited to that portion of the Equipment, which as a consequence of the delay cannot be commercially or effectively used. The compensation shall be in full satisfaction of loss suffered by the Purchaser due to the delay and shall be in lieu of any other right the Purchaser may have against ADAPT AUSTRALIA.

5.3 Extension of Time

Clause 5.2 shall not apply if delivery of the Equipment is delayed due to the bad faith or negligent actions or omissions of the Purchaser or by any Force Majeure Event, in which case ADAPT AUSTRALIA shall be entitled to a reasonable extension of time for delivery.

5.4 Partial Deliveries

ADAPT AUSTRALIA reserves the right to make partial deliveries of the Equipment and to separately invoice the same unless otherwise agreed in writing.

5.5 Force Majeure

If a Force Majeure Event prevents a party from partially or wholly complying with its obligations under the Contract (other than payment obligations) then the party shall not be obliged to perform those obligations until it is no longer prevented from doing so and shall be granted an extension of time accordingly.

6 Risk

Risk in the Equipment shall pass to the Purchaser upon delivery and thereupon risk of damage, deterioration or loss to the Equipment from any cause whatsoever shall pass to the Purchaser.

7 Title

7.1 Title and property in Equipment shall remain with ADAPT AUSTRALIA until full payment of the Consideration is made to ADAPT AUSTRALIA by the Purchaser.

7.2 If the Purchaser transfers possession of the Equipment, then any proceeds from the transfer of possession of the Equipment shall be held on trust for ADAPT AUSTRALIA.

8 Payment

8.1 Unless otherwise stated in the Offer, full payment of the Consideration is due upon delivery of the Equipment.

8.2 Notwithstanding clause 8.1, full payment of the Consideration shall be made no later than thirty (30) days from the date of ADAPT AUSTRALIA's invoice.

8.3 If the Purchaser fails to pay the Consideration in accordance with these Terms and Conditions, then;

- (a) ADAPT AUSTRALIA will have the right, in addition to all other rights entitled at law, to charge interest on the overdue amount at a rate of three percent (3%) per annum in excess of the National Australia Bank's "Business Overdraft Prime" rate or equivalent from time to time; and
- (b) the Purchaser agrees to pay any costs (including legal costs on a solicitor/own client basis), charges, expenses or outgoings incurred in relation to the recovery of the outstanding amount.

9 GST

9.1 The Consideration is GST exclusive.

9.2 The Purchaser acknowledges that GST is payable by ADAPT AUSTRALIA in relation to the supply of the Equipment and that the Consideration is to be increased so that ADAPT AUSTRALIA receives an amount ('Increased Consideration') which, after subtracting the GST liability of ADAPT AUSTRALIA from the Increased Consideration, results in ADAPT AUSTRALIA retaining the Consideration after payment of the GST liability.

10 Liability for Defects in the Equipment

10.1 ADAPT AUSTRALIA shall make good by repair or at ADAPT AUSTRALIA's option replacement within a reasonable time after notification by the Purchaser, defects caused by ADAPT AUSTRALIA's failure to comply with the Contract or which appear in the work arising out of faulty material or workmanship, provided that:

- (a) the Equipment has been properly handled and used and has been operated and maintained in accordance with the Equipment manufacturer's instructions issued by ADAPT AUSTRALIA or good industry practice;
- (b) such defects (whether apparent or not) occur within a period of twelve (12) months after delivery of the Equipment; and
- (c) ADAPT AUSTRALIA has been notified in writing within seven (7) days of the alleged defect occurring.

10.2 Where the Purchaser has notified ADAPT AUSTRALIA of an alleged defect within the period specified above, the Purchaser shall promptly and at its own expense and risk, return the defective part of the Equipment to ADAPT AUSTRALIA free of charge for assessment and repair. The removal of the defective part and the installation of any repaired or replacement part shall be performed by the Purchaser at its expense and risk.

11 Limitation of Liability

11.1 Notwithstanding any other provision of the Contract and except to the extent that liability cannot legally be limited or excluded:

- (a) ADAPT AUSTRALIA will not assume any liability for a Claim with respect to any loss or damage resulting from the supply of the Equipment, including indirect or consequential or special loss or damage, economic loss, loss of contract, loss of revenue or profit or loss of production;
- (b) ADAPT AUSTRALIA's total liability arising out of or in connection with this Contract shall be limited to an amount less than or equal to the Consideration.

11.2 Conditions, warranties and other provisions which apply to the supply of the Equipment by virtue of the Trade Practices Act 1974 (Cth) (as amended from time to time) or any other comparable legislation of the Commonwealth of Australia or any State or Territory, which cannot be excluded from the Contract are declared to apply to the Contract without restriction, limitation or modification.

11.3 Subject to this clause, all other guarantees, warranties and conditions which would, or may, but for this subclause be implied (whether by statute, law, trade usage or otherwise howsoever) into the Contract (including in particular any which may in any way relate to quality or fitness for any particular purpose) are hereby expressly excluded from the Contract.

11.4 For the purposes of this clause 11, 'Claim' includes a claim, notice, demand, action, proceeding, litigation, government investigation, judgment, damage, loss, cost, expense (including legal expense) or liability however arising, whether present, unascertained, immediate, future or contingent and whether based in contract, tort or statute.

12 Termination

12.1 The Contract may be terminated by ADAPT AUSTRALIA if::

- (a) the Equipment is not paid for in full, in accordance with these Terms and Conditions or any other written agreement between ADAPT AUSTRALIA and the Purchaser; or
- (b) ADAPT AUSTRALIA receives notice of, or reasonably believes that a third party may attempt to levy execution against or attach the Equipment; or
- (c) any other event occurs which in ADAPT AUSTRALIA's opinion is likely to adversely affect the Purchaser's ability to pay for Equipment or Services supplied (including but not limited to the appointment of Insolvency Representative to the Purchaser's undertaking).

12.2 In the event of a termination under Clause 12.1, then ADAPT AUSTRALIA may at any time, without notice to the Purchaser and without prejudice to any other rights which it may have against the Purchaser;

- (a) terminate any and all other contracts existing between ADAPT AUSTRALIA and the Purchaser for the supply of Equipment and / or Services,
- (b) repossess the Equipment.

13 Right to Enter Premises

In any of the circumstances referred to in Clause 12, the Purchaser;

- (a) authorises ADAPT AUSTRALIA by itself, its agents or representatives at all reasonable times, without notice, to enter onto (with force if reasonably necessary) and at all necessary time(s), to remain in and on any premises where the Equipment is located in order to collect the Equipment, without being guilty of any manner of trespass; and
- (b) assigns to ADAPT AUSTRALIA all the Purchaser's rights to enter onto and remain in and on such premises until all the Equipment has been collected.

14 Administration & Receivership

In any of the circumstances referred to in clause 12.1(c);

14.1 neither the Purchaser nor its Insolvency Representative or any other person acting for the Purchaser and/or its creditors is entitled to sell, charge, remove, dispose of, use or otherwise deal with the Equipment in any way inconsistent with ADAPT AUSTRALIA's ownership of the Equipment, without ADAPT AUSTRALIA's prior written approval;

- 14.2 the Purchaser its Insolvency Representative and every other person acting for or on behalf of the Purchaser and/or its creditors is obliged to re-deliver the Equipment to ADAPT AUSTRALIA immediately or immediately on his appointment, as the case may be, at its or his expense; and
- 14.3 if the Equipment is returned to or collected by ADAPT AUSTRALIA, then ADAPT AUSTRALIA will within twenty-eight (28) days, account to the Purchaser or its Insolvency Representative for all monies received for the Equipment from the Purchaser less ADAPT AUSTRALIA's reasonable administration charges, expenses incurred and loss of profits involved.
- 15 Personal Property Security**
- 15.1 Notwithstanding anything to the contrary contained in these Terms and Conditions, the Personal Properties Securities Act 2009 (PPSA) applies to these Terms and Conditions.
- 15.2 The Purchaser acknowledges that if ADAPT AUSTRALIA has a security interest in;
- (a) the Equipment,
 - (b) the proceeds of the Equipment,
 - (c) the Tooling,
- for the purposes of the PPSA, then ADAPT AUSTRALIA may register its security interest in the Equipment, proceeds, and/or Tooling, as the case may be, on the Personal Property Securities Register.
- 15.3 The Purchaser undertakes, at its own expense, to promptly do anything (such as supplying information) which ADAPT AUSTRALIA requests and reasonably requires the Purchaser to do for the purposes of ensuring that the security interest is enforceable, perfected or otherwise effective.
- 15.3 For the purposes of the PPSA:
- (a) terms used in clause 15 that are defined in the PPSA have the same meaning as in the PPSA;
 - (b) these Terms and Conditions are a security agreement and ADAPT AUSTRALIA has a Purchase Money Security Interest in all present and future Equipment supplied by ADAPT AUSTRALIA to the Purchaser and the proceeds of the Equipment;
 - (c) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Purchaser at any particular time.
- 15.6 The security interest arising under this clause 15 attaches to the Equipment when the Equipment is collected from or despatched by ADAPT AUSTRALIA and not at any later time.
- 15.7 Where permitted by the PPSA, the Purchaser waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135, 157 of the PPSA.
- 15.8 ADAPT AUSTRALIA and the Purchaser agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms and Conditions.
- 15.9 To the extent permitted by the PPSA, the Purchaser agrees that:
- (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Purchaser or which would place obligations on ADAPT AUSTRALIA will apply only to the extent that they are mandatory or if ADAPT AUSTRALIA agrees to their application in writing; and
 - (b) where ADAPT AUSTRALIA has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 16 Dispute Resolution**
- 16.1 Any dispute between the parties arising out of or in connection with the Contract ('Dispute') shall be notified to the other party by written notice of that Dispute giving details of the subject matter of the Dispute.
- 16.2 The parties will attempt to resolve the Dispute within thirty (30) days of the date of the notice referred to above.
- 16.3 If the Dispute cannot be resolved in accordance with the above, then either party may refer the Dispute to mediation by a mediator agreed by the parties. The cost mediation will be paid equally by the parties.
- 16.4 If the Dispute is not resolved at mediation, then either party may submit the Dispute to arbitration in accordance with the Institute of Arbitrators & Mediators Australia Rules for the Conduct of Commercial Arbitrations with one arbitrator.
- 17 Entire Agreement and Jurisdiction**
- The Contract sets out the entire agreement and it shall be governed by and interpreted in accordance with the laws of the State of Victoria and the parties submit to the jurisdiction of the courts and the appeal courts of Victoria.
- 18 Changes in Law**
- If after the date of the Offer a law changes, is revoked or comes into effect which causes ADAPT AUSTRALIA to incur more or less cost than the Consideration, then the Consideration shall be adjusted to take into account the difference.
- 19 Notices**
- Any notice given under this Contract shall be given in writing and delivered personally or sent pre-paid post or facsimile or email addressed to the other party at such address or facsimile number or email address as a party notifies the other.

- End -