

## CONTRACT OF SALE

Thank you for your order. Please note that Australis Engineering requires our Client's to enter into a Contract of Sale for the supply of our services, goods and equipment.

**IMPORTANT:** Notwithstanding the return of a signed copy of this Contract, and unless by prior written agreement, by issuing your Purchase Order or making payment of our Invoice, you unconditionally accept the attached *Terms and Conditions of Sale and Warranty*.

### REFERENCE INFORMATION AND SCOPE OF WORK

<b>Date of Agreement:</b>		<b>Client:</b>	
<b>Client's Contact:</b>		<b>Contact's Phone:</b>	
<b>Contact's Email:</b>		<b>Accounts Email:</b>	
<b>Client's Order No:</b>		<b>Scope of Work as per Australis Quote No:</b>	
<b>Quoted Price - AUD (ex GST):</b>		<b>Estimated Delivery:</b>	
<b>Payment Terms:</b>			
<b>Warranty:</b>	See <i>Terms and Conditions of Sale and Warranty</i> attached.		
<b>Notes on Scope of Work or Special Conditions:</b> (if any)			

I have read and accept this Contract and the attached *Terms and Conditions of Sale and Warranty*

I **do not** accept this Contract and its *Terms and Conditions of Sale and Warranty* and attach alternate Conditions of Sale or a Contract for Australis Engineering's consideration. Please note that work will not commence until a mutually agreed contract has been signed by both Parties.

<b>Signature of Client's Officer</b>		<b>Name (Print)</b>
<b>Title of Client's Officer</b>		<b>Date</b>
<b>Organisation Name</b>		

**Australis Engineering Pty Ltd**  
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Form: J-CTRCT-018

# TERMS & CONDITIONS OF SALE AND WARRANTY

## Part 1 – TERMS AND CONDITIONS OF SALE

All Goods, Equipment and Services quoted and supplied by Australis Engineering Pty Ltd ACN 002 646 620, are subject to our Terms & Conditions of Sale and Warranty as stated below.

### 1. CONTRACT OF SALE

Following the receipt of a Client's purchase order, an authorised Client representative will be required to sign an Australis Engineering Pty Ltd's (Australis) "Contract of Sale" (the Contract) inclusive of the following terms and conditions of sale and warranty (the T&C's):

- a) A Contract is required for all work that is greater than or equal to AUD\$15,000 in value (ex GST). At its sole discretion, Australis may require a Contract for any work, regardless of the dollar value; and
- b) Upon the return of the Contract, it is implicit that all terms and conditions as stated here, have been read and are accepted by the Client and work on the project may then commence; or
- c) In cases where the Client is unable to provide a signed copy of the Contract, upon issue of a Purchase Order by the Client, it shall be deemed to be an acceptance by the Client of Australis Engineering Pty Ltd's Terms and Conditions of Sale and Warranty to the exclusion of any other terms supplied by or referred to by the Client (including in any Purchase Order issued by the Client), unless and to the extent that Australis Engineering expressly gives prior agreement in writing to the incorporation of such other terms or any variation of these T&C's. Furthermore, if the Client makes payment of our invoice, the Client shall be deemed to have accepted these T&C's notwithstanding any failure to provide written acceptance; and
- d) In cases where the Client is unable to provide a signed copy of the Contract, Australis may elect to commence work regardless, however by issuing its Purchase Order based on an Australis quotation, the Client expressly acknowledges, accepts and is solely bound by the T&C's of our Contract as per Clause 1 (c) and Australis will commence work on the order in good faith; and
- e) The Client acknowledges and grants that, unless otherwise agreed in writing, if any T&C's contained within the Client's Purchase Order conflict with any T&C's contained within the Australis Contract, then the Contract T&C's issued by Australis will prevail; and
- f) The failure or indulgences by Australis to exercise or delay in exercising any right, power or privilege available to it under a Contract the subject of the T&C's will not operate as a waiver thereof or preclude any other or further exercises thereof of the exercise of any right or power, and Australis shall be entitled to require strict compliance to the Contract T&C's at all times; and
- g) The Contract of Sale and Warranty T&C's are governed by, and will be construed under the laws of the State of New South Wales, Australia; and
- h) The Contract document represents the entire agreement between the Client and Australis (the Parties) and no agreement or understanding varying or extending the terms of the T&C's shall be legally binding upon either Party unless in writing and signed by both Parties or allowed under these T&C's; and
- i) If any term or agreement subject of the T&C's shall be invalid, void, illegal or unenforceable, they shall be severed from the Contract and the remaining provisions shall not be affected, prejudiced or impaired by such severance; and
- j) Australis may serve any Notice or Court document on the Client by hand, post, email, or fax. Such Notices will be deemed to be given, where delivered by hand - on the day; by post - 2 business days after the date of posting; by email or fax on the day of dispatch unless a failure to transmit report is received.

### 2. INTELLECTUAL PROPERTY, COPYRIGHT & CONFIDENTIALITY

- a) All drawings, designs, specifications and any other information provided in connection with a job, project, quotation or enquiry supplied by Australis to a Client are strictly confidential and remain the intellectual property of Australis Engineering Pty Ltd, ACN 002 646 620; and
- b) Information supplied by Australis to the Client is confidential. No information provided to the Client during the quoting process may be reproduced in whole or in part, nor is information, including but not limited to engineering designs, layouts, photos, video, scopes of work or prices are to be disclosed to any third party without our express written permission. The Client, to whom information is being provided, accepts that any such disclosure of confidential information is likely to cause material damage to our business which we will be entitled to recover from the Client; and
- c) Both Australis and the Client shall:
  - i. keep confidential, and not use, access, copy or disclose any confidential information except as permitted by this or otherwise consented to by either party in writing; and
  - ii. immediately notify the other Party, if one the disclosing Party becomes aware of any loss or unauthorised use, access, copying, disclosure or publication of any confidential information;
- d) Australis and the Client may, to the extent necessary, use confidential information for the purposes of performing its obligations or exercising its rights arising under these T&C's.
- e) Australis and the Client may disclose confidential information to their own Personnel who have a specific need to access that confidential information for the purposes of enabling the relevant Party to perform its obligations or exercise its rights arising under the Agreement provided that:
  - i. the relevant Party's Personnel have first been made aware of the terms upon which the confidential information has been disclosed to them and a duty to handle such confidential information in confidence is imposed upon the relevant Party's Personnel;
  - ii. the relevant Party's Personnel ensures that their Personnel comply with the terms of this clause as if they were parties to the Agreement; and
  - iii. any breaches of this clause by the that Party's Personnel shall be deemed to be breaches by that Party.
- f) The confidentiality obligations in this clause do not apply to Confidential Information which:
  - i. is or becomes public knowledge other than as a result of a breach of confidence;
  - ii. is lawfully obtained by Australis or the Client from a third party without any confidentiality obligation (other than as a result of a breach of confidence);
  - iii. is independently developed by Australis or the Client without reference to any obtained confidential information; or
  - iv. the Supplier is required to disclose to comply with any applicable Law, legally binding court order, request by a governmental agency or under the rules of a stock exchange; and
  - v. the burden of proving that confidential information falls within an excluded category in this clause rests with the accusatory Party.
- g) Except to the extent otherwise agreed between Australis and the Client in writing, nothing in these T&C's operates to transfer ownership of any Background IP Rights from either Party or any third party to the other Party. All such Background IP Rights are and remain owned by the relevant Party or third party. Australis grants the Client an irrevocable, non-exclusive, transferable, royalty-free licence to use Background IP Rights in connection with the Work and for the use, repair, maintenance, upgrade or modification of its products and equipment; and
- h) For all work provided by Australis, we reserve the right to capture, record and utilise media of the project, services, goods or equipment for marketing and promotional purposes and this may be excluded from the definition of confidential information where the media is solely of the Australis project, services, goods or equipment (including being in-situ at the Client's site and with the Client's product in use).

### 3. SCOPE OF WORK AND TECHNICAL SPECIFICATIONS

- a) The Scope of Work and Technical Specifications provided under any project are outlined in our quotation and are based on the information provided by the Client to Australis at the time of quotation. Changes by the Client to the requirements or specifications of the Goods, Equipment or Services that lead to additional costs incurred by Australis will be charged to the Client as a "Variation to Contract" (Variation).
- b) Changes to the Client's technical specification or our agreed scope of work may include, but are not limited to:
  - i. non-disclosure by the Client of all relevant environmental, machinery or plant operating variables that affect the design and performance of Australis Goods, Equipment or Services;
  - ii. changes in agreed project delivery timeframes, or testing, commissioning or training timeframes that result in additional costs to Australis;
  - iii. unavailability of the Client's product for testing, commissioning or training purposes;

- iv. changes to the Client's product weight, volume, dimensions, quantities and throughputs; OR a change in the number and type of products to be handled; OR changes in throughput of products to be handled by the Equipment; OR changes in the type and physical characteristics of any product or packaging material used by the Client and that affect the design and performance of Australis Goods, Equipment or Services;
  - v. changes in the number of pallet patterns and configurations required for palletising;
  - vi. changes in automation, line control and/or programming requirements for the operation of the Goods or Equipment;
  - vii. additional design or re-design work to accommodate a change of scope;
  - viii. manufacturing rework due to accommodate a change of scope;
  - ix. re-stocking/returning of parts, materials or equipment to accommodate a change of scope; or parts or materials ordered in error by the Client; or equipment, parts or materials ordered and that are surplus to the Client's requirements. In cases where the return and restocking of equipment, parts or materials is requested by the Client, acceptance of the whole or part thereof of the items will be at the sole discretion of Australis. All parts, materials and equipment returned to Australis must be in unused, merchantable condition, including original packaging (if any). In all cases, if Australis accepts the return of parts, materials or equipment, a re-stocking fee will apply. The re-stocking fee will be determined on a case by case basis but will be no less than 15% of the retail value of the items including any relevant taxes or charges. Freight and handling costs for all returns will be borne by the Client in full. A credit to the Client will be generated once returned items are confirmed as being in unused, merchantable condition. If the Client owes monies to Australis, upon mutual written agreement, the credit may be deducted from these monies. The payment of any credit by Australis to the Client will be at 45-days end of month following the receipt of final payment for any unpaid invoices by the Client;
  - x. adverse site access including but not limited to the site not being clean, clear and ready for equipment installation; fire and safety drills that prevent uninterrupted access to the work site; a site that is contaminated by dangerous substances; industrial relations disputes that prevent or limit site access;
  - xi. site characteristics, floor plans, civil engineering requirements, or site fire and safety requirements that result in modifications to our Goods, Equipment or Services;
  - xii. the operating characteristics of third-party equipment that is outside the scope of work supplied by Australis and which may impact our scope of work;
  - xiii. lack of electrical, air or other connections that are supplied by the Client and which delay our project delivery, testing, commissioning or training timeframes;
  - xiv. cancellation of all or part of a Contract by the Client;
- c) Australis cannot be held responsible for the operational constraints of any third-party equipment that are outside of the Contract, including new or existing equipment operated by the Client. Where this third-party equipment has an adverse impact on the operation of the equipment supplied by Australis and this causes additional costs, or requires additional modifications to be made by Australis, these costs will be charged to the Client as a Variation; and
- d) Any such changes to the Scope of Work or Technical Specifications may also affect the delivery schedule, in which case Australis shall be granted fair and reasonable additional time to deliver, install, test, commission or provide training on the Goods or Equipment and will accept no consequential loss to the Client due to late delivery.

#### 4. DELIVERY

- a) Delivery timeframes are specified in our quote. Delivery timeframes are an estimate only and may change due to a range of factors, including but not limited to disruptions to the supply chain for any reason, delays caused by third parties that are outside Australis Engineering's control, delays caused by the Client including late payment of invoices or milestone acceptance, natural disasters including communicable diseases. In all circumstances, Australis Engineering will do its best to meet estimated delivery timeframes, but accepts no responsibility or liability for late delivery unless otherwise mutually agreed in writing. Please also refer to clause 15 of these conditions; and
- b) Notwithstanding any quoted delivery timeframes, our forecast delivery date will be determined by the date at which Australis receives the Client's deposit monies in our bank account and thereafter the final delivery date will be determined by the date that Australis receives the Client's final engineering design approval (or 'For Manufacture' sign-off); and
- c) In the case where equipment or layout specifications are to be clarified during the course of the project, Australis cannot be held responsible for late delivery due to specification changes and/or delays in receiving critical information from the Client and Australis shall be granted fair and reasonable additional time to deliver or install the equipment if such changes are made or delays occur in the provision of information; and
- d) While Title of the Goods and Equipment does not pass to the Client until full payment has been received (refer to clauses 8, 9 and 10 of this Contract), the Client becomes responsible for insurance of the Goods and Equipment from the date of delivery to the Client's nominated location and the Client will provide timely, documentary evidence to prove its insurance coverage of our equipment. Should the Client not have adequate insurance or not provide insurance information within 3 business days of a written request by Australis, then Australis reserves the right to obtain additional insurance coverage for the Goods and Equipment and charge any or all costs associated with this coverage to the Client as a Variation and the Client agrees to pay these charges in full and net 7-days; and
- e) Except as provided for in NSW State Law, Australis shall under no circumstances be liable for any consequential loss to any party arising from late delivery of the equipment or services.

#### 5. INSTALLATION, COMMISSIONING, HANDOVER AND TRAINING

Our quoted installation, commissioning, handover and training costs are based on:

- a) Our trades people having clear and uninterrupted access to the work area at all times, including the timely provision of all products for testing/ commissioning purposes during the assigned commissioning timeframe. If our work is interrupted due to site conditions or lack of product for commissioning, any additional time required to complete the work will be charged to the customer on a "do & charge" basis at Australis' normal site rates. Australis' normal working hours are: 7.00 am to 3.00 pm Monday to Thursday and 7.00 am to 1.00 pm Friday; and
- b) Where expressly specified in our quoted Scope of Works, our proposal includes onsite installation and commissioning. The number of days and/or hours quoted for installation are consecutive and exclude overtime (unless specifically stated in the quotation). Any additional time required to complete the installation and commissioning of a project, and that is due to site conditions; site access; lack of product for testing and commissioning; additional work requested by the Client; or interruptions caused by the Client, their Suppliers or Agents; will be chargeable on a "do & charge" basis at Australis' normal site rates; and
- c) If required, the Client will provide a forklift and driver free of charge for the loading, unloading and positioning of all equipment, site boxes etc (unless specified otherwise in our quotation); and
- d) The Client will provide a suitably qualified and senior person to accept handover of the completed equipment from Australis. Handover will occur only once and if additional handovers are required (e.g. for multiple shifts) all additional handover meetings will be chargeable as a Variation. Handover must occur on the same day or next day following commissioning of the equipment; and
- e) The Client will provide suitably qualified personnel to receive basic training and instruction on the operation of the equipment. Training will only occur once (unless expressly stated otherwise) and if additional training is required (e.g. for multiple shifts), all additional training sessions will be chargeable as a Variation. Unless expressly stated otherwise, training must occur on the same day or next day following commissioning of the equipment; and
- f) All installation, commissioning, handover and training costs are prepared using Normal Time rates (unless expressly stated otherwise). Any request for site installation/ commissioning to occur outside of Normal Time will form an additional cost to the customer and will be charged to you based on our 1.5T or 2T "do & charge" rates; and
- g) Jobs quoted as "ex-Works" do not include installation, commissioning, a handover or training. If required, these services can be provided to the Client at as a Variation to Contract and with additional costs.

#### 6. DOCUMENTATION

- a) Unless expressly written in our quotation, documentation including but not limited to Safe Work Method Statements (SWMS), other WHS documentation, risk assessments, technical documents, operation manuals, maintenance manuals and spare parts lists are excluded from the Scope of Work.
- b) Additional documentation required by the Client and which has not been specifically included in our quotation or Scope of Work will form the basis of a Variation. If drawings, maintenance manuals, risk assessments, operation manuals or similar are required by the Client and not specified in the quotation, then the additional costs for preparation and printing will be passed onto the Client and charged at our 'do & charge' rates.
- c) Layout drawings may be supplied without cost at the sole discretion of Australis.
- d) All drawings and other documentation supplied to a Client are confidential and remain the intellectual property of Australis in accordance with clause 2.

#### 7. PRICES AND VALIDITY

- a) All prices are quoted in Australian Dollars and are firm and fixed for the validity period (28-days unless specified alternately). Prices do not include taxes or duties.

- b) GST is not included in the quoted price and will be added to the invoiced amount.
- c) Prices are based strictly on the Payment Terms outlined in our quotation and any deviation from these payment terms may result in an increase in our quoted price. Importantly, no allowance has been made for any contract-based financial conditions (e.g. Bank Guarantees, liquidated damages, performance guarantees, warranty bonds, >30-day payment terms or similar). If performance and financial conditions of sale are required by the Client, Australis reserves the right to amend its quoted cost to reflect these requirements.
- d) Where applicable, "Ex-Works" pricing excludes all tariffs, taxes, freight, packing and handling or other shipping costs. If required, these additional costs will form a Variation.

**8. PAYMENT AND OVERDUE ACCOUNTS**

- a) Payments to Australis must strictly comply with the terms outlined in this Contract; and
- b) Notwithstanding any other condition, the Payment Terms for all Deposit invoices are strictly 7-days net from date of invoice. Work on a project or the supply of goods or equipment will not commence until the Deposit monies have been received; and
- c) Unless mutually agreed in writing, Payment for any "Do and Charge" work completed by Australis is strictly 7-days net from date of invoice. All "Do and Charge" work will be invoiced progressively based for work completed in the 7-day period from each Thursday to Wednesday; and
- d) Unless mutually agreed in writing, payment of all Variations to Contract are strictly 7-days net from date of invoice; and
- e) Payments for Aluminium Profile and Accessories supplied with a discount (including but not limited to an "OEM Discount") will be subject to approval of a Credit Check of the Client and payments must be no later than 30-days from date of invoice or as otherwise specified in our written quote. Any OEM Discount rate does not apply to any labour costs or third-party materials or services (including freight); and
- f) Payment can be made via electronic banking or credit card (credit card payments may be subject to a surcharge); and
- g) Any failure to meet stated payment terms will result in the Client being put on stop-supply for new work and the stoppage of all existing work. Except as provided for in NSW State Law, Australis shall under no circumstances be liable for any consequential loss to any party arising from late payments by the Client causing delays to the project delivery. Please note that a potential Warranty claim does not constitute a valid reason to withhold any payment and all potential Warranty claims will be dealt with in accordance with the Warranty section of the T&C's; and
- h) Australis will not accept "back-to-back", or "offset" payment conditions from the Client unless by prior, written agreement; and
- i) Back-charges or offsets by the Client to Australis are void unless Australis has been notified in writing, in advance, of a potential warranty claim or issue and has had no less than 7 business days to respond to the claim, and has agreed, in writing, to be liable for said costs; and
- j) At its sole discretion, overdue invoices or accounts will be subject to interest at the rate of 13% p.a., calculated for the period the account is due until the date it is paid; and
- k) At Australis' sole discretion, any overdue account or invoice may be escalated for debt collection including but not limited to debt collection agencies, law firms, writs or other legal enforcement. In the event of the Client being in default of their obligation to pay and the overdue account is then referred to a debt collection agency, and/or law firm for collection the Client shall be liable for the recovery costs incurred and if the agency charges commission on a contingency basis the Client shall be liable to pay as a liquidated debt, the commission payable by Australis to the agency, fixed at the rate charged by the agency from time to time as if the agency has achieved one hundred per cent recovery and the following formula shall apply:

$$\left\{ \frac{\text{Original Debt}}{100 - \text{Commission\% charge by Agency (incl.GST)}} \right\} \times 100$$

In the event where Australis or its agent refers the overdue account to a lawyer, the Client shall also pay as a liquidated debt the charges reasonably made or claimed by the lawyer on the indemnity basis; and

- l) In accordance with clauses 9 and 10 of this Contract, the Title of Goods and Equipment does not pass to the Client until the Client has made full and clear payment of all monies due to Australis and Australis reserves the right, in accordance with the provisions of this Contract, to register an interest, seize, repossesses or sell the Goods and Equipment in order to recover all outstanding monies owed to it by the Client.

**9. LIEN**

Purchase orders made to Australis shall have a general and particular possessory lien upon all Goods (which in this clause includes any documents relating to those Goods) of the Client whatsoever which are in the possession or under the control of Australis until all accounts due to Australis by the Client, consignee or owner of such Goods are paid in full (including all costs and expenses incurred by Australis in recovering or enforcing payment of such accounts). Australis is entitled to detain any Goods and may decline to effect delivery even where accounts are not overdue for payment. Australis may sell all or any of the Goods by public auction or private treaty without notice to the Client and apply the proceeds of sale to offset the debt in part or in whole depending on the sale amount. If the sale of the Goods does not offset the whole debt (including sale costs) then the balance shall remain due and payable to Australis. If the proceeds of the sale are in excess of the debt due, Australis will credit the difference to the Client.

**10. PERSONAL PROPERTIES SECURITIES ACT (PPS Act)**

- a) Words in italics shall have the same meaning and definitions set out in the Personal Properties Securities Act 2009 (Cth), (the PPS Act).
- b) The Client acknowledges that by virtue of these T&C's, Australis has a *security interest* in the Goods and Equipment for the purposes of the PPS Act and the *proceeds of sale* of such goods and equipment and to the extent applicable, the PPS Act applies to any agreement pursuant to the T&C's.
- c) The Client acknowledges that Australis may do anything reasonably necessary, including but not limited to registering any security interest which Australis has over the goods and equipment or the *purchase money security interest (PMSI)* in the Goods and Equipment on the Personal Properties Security Register (PPSR) in order to *perfect* the security interest and comply with the requirement of the PPS Act.
- d) The Client waives pursuant to section 157(3) (b) of the PPS Act the right to receive notice of a *financing statement, financing change statement, or a verification statement* in relation to any registration on the PPSR.
- e) The rights of Australis under this document are in addition to and not in substitution for Australis' rights under other law (including the PPS Act) and Australis may choose whether to exercise rights under this document, and/or under such other law as it sees fit.
- f) The following provisions of the PPS Act do not apply and, for the purposes of section 115 of the PPS Act are "contracted out" of this document in respect of Goods or Equipment that are not used predominantly for personal, domestic, or household purposes:
  - i. sections 95 (notice of removal of accession to the extent it requires Australis to give notice to the Client), 96 (retention of accession), 125 (obligations to dispose of or retain collateral);
  - ii. section 130 (notice of disposal to the extent it requires Australis to give notice to the Client);
  - iii. section 132 (3) (d) (contents of statement of account after disposal);
  - iv. section 132 (4) (statement of account if no disposal);
  - v. section 135 (notice of retention)
  - vi. section 142 (redemption of collateral); and
  - vii. section 143 (re-instatement of security agreement).
- g) The following provisions of the PPS Act:
  - i. section 123 (seizing collateral);
  - ii. section 126 (apparent possession);
  - iii. section 128 (secured party may dispose of collateral);
  - iv. section 129 (disposal by purchase); and
  - v. section 134 (1) (retention of collateral)

confer rights on Australis. The Client agrees that in addition to those rights, Australis shall, if there is a default by the Client, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this document and the Client agrees that Australis may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.

- h) The parties agree not to disclose information of the kind that can be requested under section 275 (1) of the PPS Act. The Client must do everything necessary on its part to ensure that section 275 (6) (a) of the PPS Act continues to apply. The agreement in this sub-clause is made solely for the purpose of allowing to Australis the benefit of section 275 (6) (a) and Australis shall not be liable to pay damages or any other compensation or be subject to injunction if Australis breaches this sub-clause.
- i) The Client undertakes:
- Promptly to do all things including signing any further documents and providing any further information which Australis may reasonably require to enable it to perfect and maintain the *perfection of its security interest* or PMSI (including by registration of a *financing statement* or *financing change statement* on the PPSR and the Client warrants that such information the Client provides will be complete, accurate and up-to-date in all respects);
  - To give Australis not less than 14 days prior notice of any proposed change in the Client's name or any other change in the Client's details (including, but not limited to, changes in its address, phone, facsimile number, email address and trading name).

#### 11. VALIDITY

Unless otherwise specified in our proposal, our quotation is valid for a period of twenty-eight (28) days only. Revalidation in writing is required after this period and Australis reserves the right to amend its quoted price as a result of this revalidation.

#### 12. INDUCTIONS, SAFE WORK METHOD STATEMENTS, AND HEALTH & SAFETY PLANS

Unless expressly stated in the quotation, no allowance has been made for employee inductions (including online inductions), or the preparation of Safe Work Method Statements (SWMS) or Health & Safety Plans. Any costs related to the completion or preparation of the aforementioned requirements will be borne solely and in full by the Client and will form the basis of a Variation.

#### 13. SITE ENVIRONMENTAL & WHS REGULATIONS

- While on the Client's site, the Client will be responsible for Australis staff and our nominated sub-contractors and will not require any Australis staff or sub-contractors to contravene any WHS or environmental laws or regulations.
- The Client indemnifies Australis in full for any direction given by the Client that results in Australis breaching any WHS or environmental law.

#### 14. CONSEQUENTIAL LOSS

Except as provided for in NSW State Law, Australis shall under no circumstances be liable for any consequential loss to any party arising from any delay in delivery of the equipment; fault in the equipment; or failure of the equipment to perform.

#### 15. FORCE MAJEURE

Australis will have no liability to the Client in relation to any loss, damage or expense caused by Australis' failure to complete an order or contract as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lock-out, war or the inability of Australis' suppliers to supply necessary materials or any other matter beyond Australis' control.

## Part 2 - WARRANTY - FOR EQUIPMENT SALES WITHIN AUSTRALIA

The Purchaser (Client) of any equipment supplied by Australis Engineering Pty Ltd (Australis) agrees to accept the following warranty conditions that are supplied to the Client with our quotation and form part of our Terms and Conditions of Sale.

**Australis warrants that our equipment will be free from defects due to faulty workmanship, or materials for a period of 12-months from the date of delivery of our equipment subject to the following warranty conditions:**

- Our 12 months warranty applies to the Goods or Equipment being used on a single working shift per day only. If the Goods or Equipment are being used on multiple shifts on any days our warranty period is reduced to six months; and
- Where another Company, Sub-Contractor or Entity (Third Party) supplies manufactured parts or services to Australis and that form part of the Goods or Equipment, then the Third-Party warranty conditions will apply for the parts or services that they have supplied; and
- If delivery of the Goods or Equipment is delayed by the Client for any reason, the warranty period will commence from the "Completion of Manufacture" date advised at its sole discretion by Australis; and
- All potential Warranty claims must be notified in writing to Australis within 24 hours of occurrence of the issue, or the next Business Day if the claim occurs on a weekend. Australis will acknowledge receipt of the warranty notification, and in good faith, act as quickly as possible to investigate and where necessary, rectify the issue; and
- Australis maintains a comprehensive Marine Insurance Policy for the transport of its equipment to a Client site. A warranty claim the result of shipping/ transit damage must be notified to Australis immediately and the Client must provide photographic, video and other documentary evidence as directed by Australis and at the Client's cost. The Client agrees to cooperate in full to resolve any insurance claim that may result from damage during shipping, unloading or of the equipment on the Client's site, including but not limited to; granting site access for an insurance assessment and providing evidence, including witness statements, photographs, video or similar evidence to support any insurance claim; and
- Our warranty does not cover any defect caused by operator error, incorrect installation on the part of the Client, or the Client's mistreatment of the Goods or Equipment; and
- If in the sole opinion of Australis, the Goods or Equipment have not been properly maintained and the incorrect, or lack of maintenance has caused a defect, our warranty will not cover the defect; and
- If during the warranty period, the Goods or Equipment have been modified by the Client in any way without prior written authorisation from Australis our warranty responsibilities will cease; and
- Should the Goods or Equipment not perform satisfactorily due to non-disclosure by the Client of all relevant operating variables, parameters and product characteristics, then any modifications required to achieve satisfactory performance will be charged to the Client at our normal workshop or site rates and these changes are not considered a valid warranty claim; and
- A warranty claim will not be accepted if the Goods or Equipment have not been installed by Australis or its nominated delegate and the defect has occurred as a result of faulty or incorrect installation. This may include instances where the Client moves or relocates the Goods and Equipment after initial installation by Australis;
- Where practical, the faulty Goods or Equipment must be sent at the Client's expense to Australis for inspection and repair. If it is not practical to return the Goods or Equipment for repair then Australis must agree that the defect is due to faulty workmanship or materials prior to accepting responsibility for the fault. Photographic or video evidence of the fault may be required and will be provided at the Client's cost; and
- If the Goods or Equipment are returned, our warranty does not cover any labour costs associated with the dismantling or reassembly of the Goods or Equipment on the Client's site; and
- Our warranty does not cover any costs for freight or taxes for any replaced or returned Goods or Equipment; and
- If responsibility for a fault is accepted, Australis will at its discretion:
  - Repair the fault in our workshop or at the Client's site; or
  - Replace the faulty the Goods or Equipment with equivalent the Goods or Equipment; or
  - Pay the reasonable cost to the Client of either a) or b) above and Australis must give written authorisation to accept these costs prior to the Client proceeding; and
- In all circumstances, back-charges or invoice payment offsets (if any) by the Client are void unless Australis has been:
  - notified in writing of a warranty issue in accordance with clause 4 of these Warranty Conditions; and
  - given a reasonable opportunity to respond to the claim; and
  - has subsequently agreed to any reasonable charges in writing; and
  - that these charges will be no greater than the minimum cost necessary to resolve the claim; and must exclude any profit; and
  - back-charges and offsets will not apply to any variations by the Client in the scope of works that are not deemed to be a warranty claim; and

- 16 If it is agreed to attend the Client's site to repair the faulty Goods or Equipment, this will be done as soon as possible during our normal working hours which are: 7.00am to 3.00pm Monday to Thursday and 7.00am to 1.00pm Friday.
- a) If the Client requires that a potential warranty call-out be undertaken outside the normal working hours listed in clause 16, then the Client must pay the difference between our normal time labour rates and overtime labour rates for all overtime work. Repairs undertaken outside of normal time hours are subject to the availability of our trades people and relevant materials; however, Australis will endeavour to complete repairs at the earliest time possible; and
- 17 Unless expressly outlined in our quotation, if the Client's site is outside of the Sydney Metropolitan area, the additional cost of attending the Client's site to assess and rectify a warranty claim will be charged to the Client and the Client agrees to pay these charges in full and net 7-days. The additional costs may include but are not limited to the following: travelling time, accommodation, air-fares, travel costs & allowances; and
- 18 When a warranty call-out has been pre-arranged, the Client agrees that all relevant the Goods or Equipment will be available and ready to be serviced at the appointed time and that all product types will be available to facilitate testing of the Goods or Equipment. Failure to have the Goods or Equipment available at the pre-arranged time due to no fault of Australis or failure to have sufficient type and quantity of product available for testing due to no fault of Australis will result in charges for our time and disbursement costs being raised against the Client and the Client agrees to pay these charges in full and net 7-days; and
- 19 All warranty service calls will cease to be free of charge once the fault has been repaired and Australis' personnel are satisfied that the Goods or Equipment are working correctly and any additional non-warranty work conducted during a warranty call-out will be fully chargeable to the Client as a Variation and the Client agrees to pay these charges in full and net 7-days; and
- 20 Should the Client request our personnel to continue monitoring the Goods or Equipment after being advised that the repairs have been reasonably completed; the Client must pay for the additional costs for our personnel to stay on site as requested and the Client agrees to pay these charges in full and net 7-days. The additional costs may include all or some of the following: labour, meals, accommodation, air-fares, travel costs and allowances; and
- 21 If Australis attends a warranty call and it is found that the problem is the fault of others, the Client must pay for all the costs incurred by Australis personnel to attend your site and the Client agrees to pay these charges in full and net 7-days; and
- 22 Except as provided for in NSW State Law, Australis Engineering Pty Ltd shall under no circumstances be liable for any consequential loss to any party arising from any fault in the equipment or failure of the equipment to perform or delays by third parties to provide replacement parts or materials and to which Australis has no control; and
- 23 No variation of any of the terms contained herein shall be of any force or effect unless agreed to in writing and signed by both parties.