

**1. Interpretation**

In these Conditions:

“BUYER”	means Fortress Systems Pty Ltd ACN 005 632 173 whose registered office is located at 324 Governor Road, Braeside, Victoria 3195.
“CONDITIONS”	means the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.
“CONTRACT”	means these Conditions, the Order and any variation to the Order or the Conditions made in accordance with clause 2(e) of the Conditions.
“DELIVERY ADDRESS”	means the address stated on the Order.
“GOODS”	means the goods (including any instalment of the goods or any part of them, if any) described in the Order.
“GST”	has the meaning given by Section 195.1 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
“MODERN SLAVERY”	has the meaning given in the Modern Slavery Act 2018 (Cth).
“ORDER”	means any order in writing from the Buyer to the Seller for provision of goods or services.
“PRICE”	means the price of the Goods or the charge for the Services.
“SANCTION”	means any economic or financial sanction, trade embargo or similar measures imposed, enacted, administered or enforced from time to time by a Sanctions Authority.
“SANCTIONED COUNTRY”	means any country or territory which is subject to the target of comprehensive, country-wide or territory-wide Sanctions, which as of the date of the Agreement, comprise the Crimea region of Ukraine, Russia, Cuba, Iran, North Korea and Syria.
“SANCTIONED PERSON”	means any person or entity which is: (a) listed on, or is owned or controlled directly or indirectly (as such terms are used in the Sanction or in any guidance in relation to the Sanction) by a person or entity listed on, a Sanctions List; (b) located in, incorporated under the law of, or acting on behalf of a person located in or organised under the laws of a Sanctioned Country; or (c) otherwise a target of a Sanction.
“SANCTIONS AUTHORITY”	means each of the following: (a) the United States of America; (b) the United Nations; (c) the European Union and any present or future member state thereof; (d) the United Kingdom; (e) Australia; and (f) the respective governmental and official institutions or agencies of any of the foregoing including the Office of Foreign Assets Control (OFAC) by the United States' Department of the Treasury, the United States' Department of State, the Security Council of the United Nations, Her Majesty's Treasury by the Government of the United Kingdom, the Ministry for the Economy and Finance (Directorate-General of the Treasury) of France and the Australian Sanctions Office by Australia's Department of Foreign Affairs and Trade.
“SANCTIONS LIST”	means any of the lists of specifically designated nationals or designated persons or entities (or equivalent) held, issued or maintained by any Sanctions Authority, each as amended, supplemented or substituted from time to time.
“SELLER”	means the company to whom the Order is addressed.
“SERVICES”	means the services (if any) described in the Order.
“SPECIFICATION”	includes any drawings, data sheets, specifications or other information relating to the Goods or Services.

Any reference in the Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted, or extended at the relevant time. The headings in the Conditions are for convenience only and shall not affect the interpretation of the Conditions.

**2. Basis of Purchase**

- The Order constitutes an offer by the Buyer to purchase the Goods or to acquire the Services subject to the Conditions.
- Unless agreed otherwise by the Buyer in writing, the Conditions apply to every purchase to the exclusion of any other terms and conditions on which any quotation has been given to the Buyer by the Seller or subject to which the Order is accepted or purported to be accepted by the Seller.
- The Order must be accepted in writing by the Seller. The Seller, on acceptance of the Conditions indemnifies the Buyer against any loss arising from the Seller subletting or assigning any part of the Contract without the prior written approval of the Buyer.
- The Order will lapse unless unconditionally accepted by the Seller in writing within fourteen (14) days of the Order being placed, unless otherwise agreed between the Buyer and the Seller in writing.
- No variation to the Order or the Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.

**3. Specifications**

- The quantity, quality and description of the Goods or the Services shall, subject to anything to the contrary provided in the Conditions, be as specified in the Order and in any applicable Specification supplied by the Buyer to the Seller or agreed in writing by the Buyer.
- The Seller agrees to deliver the Goods and Services in conformity with any applicable Australian or New Zealand legislation in addition to any or other safety, quality, technical standards or regulations and that this clause 3(b) is a material term of the Contract. This means that breach of this clause allows the Buyer to take action against the Seller, including termination of the Contract.
- Any Specification supplied by the Buyer to the Seller, or specifically produced by the Seller for the Buyer, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Buyer. The Seller shall not disclose to any third party or use any such Specification unless required for the purpose of the Contract and unless agreed to by the Buyer in writing.
- The Seller warrants that the manufacture, packaging, packing and delivery of the Goods complies with all applicable Australian or New Zealand regulations, legislation, or other legal requirements.
- The Seller shall not unreasonably refuse any request by the Buyer to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or the premises of any third party prior to despatch, and the Seller shall provide the Buyer with all facilities reasonably required for inspection and testing at the Seller's cost. Such inspection and testing does not imply acceptance of such Goods by the Buyer, as further detailed examination by the Buyer will generally take place after receipt.
- If, as a result of the inspection or testing either before or after receipt of the Goods, the Buyer is not satisfied that the Goods comply in all respects with the Contract, the Buyer may, but is not obliged to inform the Seller, and the Seller, within a reasonable time, which shall not exceed seven (7) days, shall take such steps as are necessary to ensure compliance, in all respects with the Contract which may include replacing the Goods.
- Without prejudicing its rights under clause 3(b), if the Buyer agrees, the Seller may promptly replace any Goods found not to comply with the drawings, Specifications, descriptions and samples supplied or found to be defective or faulty after delivery and inspection by the Buyer.
- The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course of delivery.

**4. Price of the Goods and the Services**

- (a) The Price of the Goods and the Services shall be as stated in the Order and, unless otherwise so stated, shall be:
- (i) exclusive of any GST, which shall be payable by the Buyer subject to receipt of a valid tax invoice from the Settler; and
  - (ii) inclusive of all charges for packaging, packing, shipping, carriage, insurance, and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than GST.
- (b) The Seller shall not increase the Price (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in writing.

**5. Terms of Payment**

- (a) The Seller shall be entitled to invoice the Buyer for the Goods or Services after delivery of the Goods or performance of the Services, as the case may be, and each invoice shall quote the number of the Order.
- (b) Unless otherwise stated in the Order, the Buyer shall pay the Price of the Goods and the Services within five (5) days of the end of the month following the month that the Goods were received or the Services were performed, and receipt by the Buyer of a proper tax invoice or, if later, after acceptance of the Goods or the Services in question by the Buyer.
- (c) The Buyer shall be entitled to set off against the Price any sums owed to the Buyer by the Seller.

**6. Delivery**

- (a) The Goods shall be delivered to, and the Services shall be performed at, the Delivery Address on the date or within the period stated in the Order, in either case during the Buyer's usual business hours.
- (b) Where the date of delivery of the Goods or of performance of the Services is to be specified after the placing of the Order, the Seller shall give the Buyer reasonable notice of the specified date.
- (c) The Seller shall supply the Buyer in good time, which shall not exceed seven (7) days, with any instructions or other information required to enable the Buyer to accept delivery of the Goods and performance of the Services.
- (d) The time of delivery of the Goods and performance of the Services is of the essence to the Contract. This means that if the Seller delays delivery, this may be a breach of the Contract.
- (e) A packing or delivery note quoting the number of the Order must accompany each delivery or consignment of the Goods and must be displayed prominently.
- (f) If the Goods are to be delivered, or the Services are to be performed, by installments, the Contract will be treated as a single Contract and not severable in any way.
- (g) The Buyer shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Buyer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- (h) The Buyer shall not be obliged to return to the Seller any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Buyer.
- (i) If the Goods are not delivered or the Services are not performed on the due date as stated in the Contract then, without prejudice to its rights under clause 6(d), the Buyer shall be entitled to deduct from the Price (if the Buyer has paid the Price) or to claim from the Seller by way of liquidated damages for the delay, one per cent (1%) of the Price for every week's delay, up to a maximum sum representing ten per cent (10%) of the Price, or shall be entitled to cancel the whole or any unexecuted part of the Order forthwith, at the Buyer's option.
- (j) If the Buyer instructs the Seller to delay delivery for any reason whatsoever, the Seller shall store the Goods at its own cost.

**7. Risk and Property**

Risk of damage to or loss of the Goods shall pass to the Buyer only upon delivery to the Buyer in accordance with the Contract. The property in the Goods shall pass to the Buyer when the Goods have been delivered to the Buyer or the person specified by the Buyer or when the Buyer has paid for the Goods, whichever is the earlier.

**8. Warranties**

- (a) The Seller warrants to the Buyer that the Goods:
- (i) will be of the quality required by law and fit for any purpose held out by the Seller or made known to the Seller in writing at the time the Order is placed;
  - (ii) will be free from defects in design, material and workmanship;
  - (iii) will correspond with any relevant Specification or sample; and
  - (iv) will comply with all statutory requirements and regulations relating to the sale of the Goods.
- (b) The Seller warrants to the Buyer that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances.
- (c) Without prejudice to any other remedy, if any Goods or Services are not supplied or performed in accordance with the Contract, then the Buyer shall be entitled:
- (i) to require the Seller to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within seven (7) days of being requested to do so by the Buyer in writing; or
  - (ii) at the Buyer's sole option, and whether or not the Buyer has previously required the Seller to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid.

**9. Limitation of Liability**

The Seller shall indemnify the Buyer in full against all liability, claims, losses, damages, costs and expenses (including legal expenses on a full indemnity basis) awarded against or incurred or paid by the Buyer as a result of or in connection with:

- (a) breach of any warranty given by the Seller in relation to the Goods or the Services;
- (b) any claim that the Goods infringe, or their importation, use or resale, infringes, the patent, copyright, design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;
- (c) any liability under the Competition and Consumer Act 2010 (Cth) or any similar legislation within each State or Territory in respect of the Goods;
- (d) any act or omission of the Seller or its employees, agents, or sub-contractors in supplying, delivering, and installing the Goods; and
- (e) any act or omission of any of the Seller's personnel in connection with the performance of the Services.

**10. Force Majeure**

Neither the Seller nor the Buyer shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods or the Services, if the delay or failure is beyond that party's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond either party's reasonable control:

- (a) Act of God, explosion, flood, tempest, fire, or accident that do not arise or are not connected with the Goods or the Services;
- (b) war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- (c) acts, restrictions, regulations, by-laws, prohibitions, or measures of any kind on the part of any governmental, parliamentary, or local authority; and
- (d) import or export regulations or embargoes.

**11. Termination**

- (a) The Buyer shall be entitled to cancel the Order in respect of all or part only of the Goods or the Services by giving notice to the Seller at any time prior to delivery or performance, in which event the Buyer's sole liability shall be to pay to the Seller the Price for the Goods or Services in respect of which the Buyer has exercised its right of cancellation.
- (b) The Buyer shall be entitled to terminate the Contract without being liable for any costs to the Seller by giving notice to the Seller at any time if:
  - (i) the Seller makes any voluntary arrangement with its creditors, becomes bankrupt or (being a company) becomes insolvent or subject to an administration order or goes into liquidation; or
  - (ii) an administrator takes possession, or a receiver or a liquidator is appointed, of any of the property or assets of the Seller; or
  - (iii) the Seller ceases, or threatens to cease, to carry on business; or
  - (iv) the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller and notifies the Seller accordingly.
  - (v) The Seller fails to remedy or provide an acceptable plan to remedy an identified instance of Modern Slavery within the time frame specified by the Buyer.

**12. Indemnity**

The Seller indemnifies the Buyer against any claim, cost, expense or loss (including legal expenses on a full indemnity basis) arising from or related in any way to any dealing between the Buyer and the Seller under the Contract or anything arising therefrom or arising as a result of any breach of the Conditions.

**13. Modern Slavery**

- (a) The Buyer works to comply with the requirements of the Modern Slavery Act 2018 (Cth) and expects the same of its suppliers.
- (b) The Seller warrants that:
  - (i) it investigates the risk of Modern Slavery within its operations, and those of its supply chain;
  - (ii) it assesses and addresses risks regarding Modern Slavery, including implementing appropriate due diligence and remediation programs;
  - (iii) it will notify the Buyer as soon as possible of any confirmed instances of Modern Slavery and the actions undertaken by the Seller to remedy the issue;
  - (iv) it has all the necessary processes, procedures, investigations and compliance systems in place to undertake the actions in clauses 13(b)(i) to 13(b)(iii);
  - (v) upon request, the Seller will provide evidence to the satisfaction of the Buyer which validates the Seller's compliance with this clause;
  - (vi) it will include a clause similar to this clause 13 in all contracts it enters into with its suppliers.

**14. Bribery and corruption**

- (a) The Contractor must not, and must ensure that its Personnel do not:
  - (i) pay or accept any commissions or fees, or make or accept any payments or rebates to or from any employee or officer of the Buyer or its Related Bodies Corporate, or favour any of those persons with gifts or entertainment of unusual or substantial value, or enter into any business arrangements with any of those persons, that would result in a detriment to the Seller or is contrary to fair dealing; and
  - (ii) provide or offer to provide a benefit (which is not legitimately due) to a public official (including a foreign public official) in order to retain or obtain a business advantage.
- (b) The Seller must, and must ensure that its Personnel, immediately report to the Buyer any offer, payment, rebate or other benefit, or any receipt of any payment, benefit or rebate of the kind referred to in clause 14(a).

**15. Sanctions**

- (a) The Seller hereby warrants and represents that the Seller and all of its Personnel, Related Bodies Corporate, Subcontractors and suppliers:
  - (i) are not a Sanctioned Person;
  - (ii) are not violating any Sanctions applicable to it; and
  - (iii) are not engaging with a Sanctioned Person.
- (b) The Seller must immediately give notice to the Buyer if:
  - (i) the Seller provides incorrect information in connection with the Sanctions;
  - (ii) the Seller breaches any provision of the Agreement relating to Sanctions; or
  - (iii) its Personnel, its Related Body Corporate, or any of its suppliers or Subcontractors becomes a Sanctioned Person.
- (c) Where clause 15(b) applies the Buyer may:
  - (i) immediately terminate the Agreement and any or all Purchase Orders under clause 11(b); and
  - (ii) claim compensation from the Contractor for any damages or losses which it suffers.
- (d) Without limiting any remedy to which the Buyer might otherwise be entitled, the Buyer may terminate the Agreement if it determines that the Agreement violates any applicable Sanction.

**16. General**

- (a) Any notice required or permitted to be given by either party to the other under the Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- (b) All notices given under these Conditions shall be deemed to have been received:
  - (i) if posted by prepaid post two (2) days after the date of posting;
  - (ii) if delivered by hand, on the date of delivery; and
  - (iii) if sent by facsimile or electronic transmission, on receipt by the sender of the activity (confirmation) report as to the successful transmission.
- (c) The Conditions shall be governed by the laws of Victoria, Australia, and the parties irrevocably submit to the jurisdiction of the Courts of that State and any Court of Appeal therefrom