

TERMS AND CONDITIONS OF SALE

- 1. Governing terms and conditions**
 - 1.1. These terms apply to the sale of goods by StratX Pty Ltd (SX) to the Buyer (including installation, transportation and other services, where contracted and if applicable). These terms prevail over any terms in any other documents and represent the entire agreement between SX and the Buyer.
 - 1.2. In placing an order for goods with SX, accepting delivery of goods (delivery takes place at port of loading, or as defined in the contract), making any payment or complying with these terms, the Buyer is taken to have accepted them.
 - 1.3. To be read in conjunction with the Sale Confirmation
- 2. Indicative pricing, quotations and price**
 - 2.1. Indicative pricing is the mechanism of indicating only an estimate pricing of the product to be provided, it bears no value to an agreed quote or an agreement to enter into a contract of any nature and can be withdrawn at any time.
 - 2.2. SX may withdraw or alter any quotation without giving notice. If SX does not withdraw the quotation, it is valid for the period stated. If no period is stated, it is valid for 30 days from the date the quotation was given.
 - 2.3. The price becomes firm once the Buyer has entered into the agreement to purchase the product.
 - 2.4. Unless SX agrees in writing, the price of the goods is the price SX usually charges for the goods. Any price concession or discount SX provides is conditional on full compliance with these terms.
 - 2.5. If the Buyer instructs SX in writing or if SX considers any instruction from the Buyer (verbal or written) to be an instruction to perform a variation, SX must perform the variation but only after the Buyer has agreed the price in writing within seven (7) days of receipt by SX of the instruction. The agreed price of the variation must be added to the price and if SX is delayed, SX is entitled to an extension of time.
 - 2.6. Freight, if applicable to the contract and will always be based on a provisional sum.
- 3. GST**
 - 3.1. Unless SX states differently, the price is GST exclusive.
 - 3.2. In addition to the price for the goods payable by the Buyer to SX, the Buyer must pay to SX an amount equal to any GST that SX is liable for on any supply by SX under these terms.
 - 3.3. The Buyer must pay amounts for GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Buyer pays the price (or any part of it if SX agrees to the Buyer paying the price by installments).
 - 3.4. If any payment made by one party to any other party under or relating to these terms constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply must be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This provision is subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breach or termination of, and indemnities arising from, these terms.
- 4. Payment**
 - 4.1. Based on payment terms as stipulated in contract.
 - 4.2. SX makes a monthly progress claim as provided to the Buyer in the payments schedule, the Buyer must pay the amount of the progress claim on or before the due date of the progress payment without any deduction.
 - 4.3. The Buyer must pay any agreed deposit or payment in full plus any necessary prescribed disbursements on acceptance of these terms.
 - 4.4. The Buyer must make all payments free of any set-off or counterclaim and without any deduction or withholding.
 - 4.5. Where the Buyer is responsible for installation of the goods, the Buyer may have access to inspect them prior to shipping/delivery, at the Buyers expense but the Buyer must pay the balance of the price before the goods are released/shipped.
 - 4.6. If delivery is delayed at the Buyer's request and the delay is for more than seven (7) days, the balance of the price becomes due and payable (including any applicable storage costs) and the goods are at all times at the Buyer's sole risk.
- 4.7. If SX agrees to complete installation, the Buyer must pay the balance of the price (excluding the cost of the installation works) before delivery. The Buyer must pay the cost of installation within seven (7) days from the date of handover of the installation works undertaken by SX to the Buyer or when the Buyer takes occupancy or possession of the installation works (whichever is the sooner).
 - 4.8. SX may require immediate payment of all unpaid monies (whether or not actually due and payable by the Buyer) if any of the following occurs:
 - a) SX considers (in SX's absolute discretion) that the Buyer's creditworthiness has become unsatisfactory;
 - b) an order is made, or a resolution is passed, to wind the Buyer up, a meeting is called to consider a resolution to wind the Buyer up or a provisional liquidator is appointed;
 - c) a receiver or receiver and manager is appointed over the whole or part of the Buyer's business or assets;
 - d) the Buyer enters any arrangement or composition with any of the Buyer's creditors;
 - e) the Buyer is placed under administration or a meeting is called or some other step taken to place the Buyer under administration;
 - f) the Buyer cannot pay the Buyer's debts as they fall due; or
 - g) the Buyer does not comply with these terms.
 - 4.9. SX may charge the Buyer interest if full payment is not made by the due date. Interest will be charged at 2% per annum above the prevailing ANZ prime overdraft rate on overdrafts of \$100,000 or more from the due date until full payment is made.
 - 4.10. The Buyer must pay all expenses incurred by SX in enforcing SX's rights under these terms.
- 5. Cancellation**
 - 5.1. The Buyer cannot cancel any order or contract or return any goods unless SX first agrees in writing. SX will not agree to any cancellation or return unless the Buyer indemnifies SX for all loss or damage SX suffers or incurs as a result of the cancellation or return. SX may cancel any order or contract if SX considers SX may be unable to supply the Buyer the goods.
 - 5.2. SX may cancel the whole or part of an order or contract by giving the Buyer notice, if:
 - a) anything in clause 4.8(a) occurs;
 - b) the goods remain uncollected after 14 days from when SX tells the Buyer that the goods are ready for collection; or
 - c) the Buyer does not call for delivery or installation of goods that SX has agreed in writing to deliver or install 14 days from when SX tells the Buyer that the goods are ready; orAs specified in writing in the confirmation of sale
If SX cancels in these circumstances, the Buyer must pay SX for any loss, liability, cost or expense SX incurs as a result of the cancellation and a reasonable cancellation fee SX fixes.
 - 5.3. The Buyer has no claim against SX and SX is not liable to the Buyer for any loss, liability, cost or expense, which the Buyer may incur as a result of a cancellation under this clause.
- 6. Delivery**
 - 6.1. Any delivery time SX gives the Buyer is only an estimate. SX is not liable to the Buyer for any loss or damage the Buyer suffers or incurs as a result of late delivery.
 - 6.2. The Buyer must still accept and pay for the goods even if SX delivers late.
 - 6.3. Unless SX agrees in writing, delivery takes place when SX notifies the Buyer that the Buyer may collect the goods from a designated location as advised by SX in writing.
 - 6.4. Where SX agrees in writing, SX must arrange delivery and installation as directed by the Buyer in writing at the Buyer's expense, or unless otherwise agreed in writing.
- 7. Risk**
 - 7.1. Unless SX has agreed in writing to install the goods, risk of damage to, or loss of, the goods passes to the Buyer at the time of delivery. SX is not liable to the Buyer for any loss or damage or deterioration of the goods after delivery, even if SX arranges freight.
 - 7.2. Where SX has agreed in writing to install the goods, risk of damage to, or loss of, the goods passes to the Buyer at the time SX notifies the Buyer that the installation is complete.

8. Insurance

- 8.1. If SX agrees only to the supply of the goods, the Buyer is responsible for arranging the Buyer's own insurance, at the Buyer's own cost, (unless otherwise stated in the confirmation of sale/contract.
- 8.2. If delivery is arranged by SX at the Buyer's cost, then SX must take out an insurance policy at the Buyer's cost to cover the goods in transit. Unless SX has agreed in writing to install the goods, SX's liability to insure ceases immediately upon delivery of the goods as stated in the confirmation of sale/contract. The Buyer may only require SX to make good loss or damage to the amount obtained by SX from the insurer and SX is not liable to the Buyer for any other damages or consequential loss.
- 8.3. Where SX has agreed in writing to install the goods:
 - a) SX must take out an insurance policy at the Buyer's cost to cover the goods until SX notifies the Buyer that the installation is complete. The Buyer may only require SX to make good loss or damage to the amount obtained by SX from the insurer and SX is not liable to the Buyer for any other damages or consequential loss.
 - b) the Buyer must take out insurance under a Contractor's Risk Insurance Policy in the sum of Ten Million Dollars (\$10,000,000) or in any other amount agreed by SX in writing which at all times covers the whole of the installation works including any associated temporary works and material incorporated or to be incorporated in the works in respect of any loss or damage to property for the full reinstatement and replacement cost plus an appropriate amount to provide for additional costs of demolition and/or removal of debris plus an appropriate percentage to cover the fees of architects, engineers, quantity surveyors and consultants and other fees properly incurred as a consequence.
 - c) the Buyer must take out insurance which at all times covers liability to the public for an amount of Ten Million Dollars (\$10,000,000) or in any other amount as may be agreed by SX in writing in respect of personal injury to or death arising by accident of any person (not being a person who at the time of the accident is defined as a worker of the insured under any Statute relating to Workers' Compensation Insurance of the State or Territory in which the installation works are situated) and in respect of any injury, loss or damage arising by accident to any property real or personal including property (other than the installation works) belonging to the Buyer in which the Buyer is interested and where the accident arises out of or is caused by the execution of the installation works.
 - d) the Buyer must indemnify SX, SX's agents, employees, successors and SX's permitted assigns and keep SX indemnified and forever held harmless against all loss, damages, claims and awards which may be imposed upon or awarded against either SX, SX's agents, employees, successors and/or SX's permitted assigns arising either directly or indirectly out of the installation works.

9. Retention of Ownership

- 9.1. SX retains title to and ownership of the goods until the Buyer has paid all monies the Buyer owes SX (and all cheques or negotiable instruments have been paid).
- 9.2. Until title passes to the Buyer, the Buyer holds the goods on SX's behalf. The Buyer must return the goods to SX if SX asks the Buyer to. SX can retake possession of any goods in the Buyer's possession if anything in clauses 4.8(a) occurs. The Buyer must take out and pay for insurance in the names of SX and the Buyer sufficient to cover both their interests in the goods. The Buyer must produce a certificate of insurance to show that the Buyer has taken out this insurance if SX asks the Buyer to do so.
- 9.3. 9.3 The Buyer must allow SX to enter any premises under the Buyer's control where the goods are kept.

10. Force majeure

- 10.1. SX is not liable for failure to comply with these terms if the failure (directly or indirectly) arises out of any circumstances which are not within SX's reasonable control. If those circumstances occur, SX may delay or cancel delivery of the goods or reduce the quantity to be delivered.
- 10.2. The following are examples of situations beyond SX's reasonable control: strikes; lock-outs; accidents; war; fire; flood; explosion; shortage of power; breakdowns of plant or machinery; shortage of raw or other materials from normal sources of supply; act of God; and any order or direction of

any local, State or Federal Government, Government authority or instrumentality (within the Commonwealth of Australia or elsewhere). This also includes international sovereign risk; war and political unrest.

- 10.3. SX is not obliged to remedy those circumstances. SX is especially not obliged to settle any strike, lock-out or any other kind of labour dispute.

11. Time-line and programming

- 11.1. The Buyer acknowledges that any advice given by SX whether verbal or in writing as to the programming of the installation works (including the dates for commencement and completion) is made in good faith based on SX's known commitments at the time of the advice.
- 11.2. Reserves the right to revise any dates for commencement and completion for any activity after undertaking a review of SX's commitments prevailing at the date of the Buyer's acceptance of SX's quotation.

12. Installation works

- 12.1. Where SX has agreed in writing to install the goods, the Buyer:
 - a) at the Buyer's own cost must assume all responsibility for all site conditions above and below the surface (including all environmental matters and the provision of any necessary services, unless SX has agreed to them in writing);
 - b) warrants that
 - i) the Buyer has sought and obtained all necessary approvals;
 - ii) the Buyer has made all necessary due inspection and inquiry of all matters pertaining to the installation site;
 - iii) the installation works are capable of being performed on the installation site;
 - iv) SX will at all times have sufficient access to the installation site to complete the installation;
 - v) the Buyer will provide adequate site facilities and the methodology of off-loading products for all vehicular off-loading;
 - vi) the Buyer will provide adequate secure storage for SX's equipment along with adequate facilities to ensure that SX can perform the installation works safely and in accordance with SX's Work Health & Safety requirements (a copy of which will be made available to the Buyer upon request);
 - vii) the Buyer will be responsible for obtaining all necessary permits and approvals necessary for the performance of the installation works and for paying all necessary fees/charges. If the Buyer requests that SX offers assistance to the Buyer in complying with this provision, SX is entitled to charge a fee to be valued as a variation;
 - viii) the Buyer, in undertaking the Buyer's site inspection, has taken into account all legislative requirements and costs whatsoever as apply to the installation site and the installation works.
- 12.2. The Buyer must, prior to SX commencing the installation works, make available to SX all documents and information relevant to ground conditions including all necessary geotechnical reports and details of sub- strata conditions that SX may reasonably require properly to perform the installation works and the Buyer warrants the accuracy of all that information.
- 12.3. The Buyer must bear the cost of all test and inspections.
- 12.4. SX recommends that all transportable buildings are secured to the ground with tie downs. The price does not include the cost of tie downs unless specifically provided for in writing.

13. Policies and Industrial relations

- 13.1. SX's Work Health and Safety policy applies to these terms.
- 13.2. The Buyer will be provided with a copy of SX's Work Health and Safety policy on request and is deemed in any event to have read and understood its provisions.
- 13.3. SX's Quality Assurance program applies to these terms.
- 13.4. The Buyer will be provided with a copy of SX's Quality Assurance program on request and is deemed in any event to have read and understood its provisions.
- 13.5. The Buyer agrees to bear all of the costs of all industrial relations matters that may be applicable to these terms from time to time.
- 13.6. The Buyer agrees to reimburse SX for all costs incurred by SX as a consequence of any changes to any award of applicable site conditions after the date of these terms.

14. Warranties

- 14.1. The manufacturer warrants that the goods will be free from defects in materials or workmanship. If there are any defects, SX's liability is limited:
- in the case of the goods, to the replacement or repair of the goods or to the cost of the replacement or repair of the goods;
 - in the case of the installation works, the resupply of the installation works or the cost of the resupply of the installation works.
- 14.2. SX provides a general defects liability warranty with respect to all installed works for the period of 3 months and the manufacturer provides a 10 year structural warranty.
- 14.3. No provision of these terms shall be read as modifying any rights or liabilities implied by the Trade Practices Act 1974 or any equivalent State legislation which cannot be excluded or modified.
- 14.4. If any goods are to be repaired for any reason, the Buyer is liable to bear all of the cost of the return and delivery of the goods.
- 14.5. This warranty does not apply where the damage complained of was caused by an Act of God or any act or omission, negligence or contributory negligence of the Buyer, the Buyer's servants or agents or anyone other than SX.
- 14.6. No claim by the Buyer is valid unless:
- made in accordance with the manufacturer's requirements for making claims;
 - within 3 months (or any period as provided for in SX's quotation) after completion of the installation works; and be made in writing within fourteen (14) days of the defect becoming known to the Buyer.
 - In the case of accessories, SX is not liable for any warranty and offers no warranty but SX agrees to use SX's best endeavours to pass on any manufacturer's warranty. SX does not offer any extension on the manufacturer's warranty for accessories.

15. Limitation of liability

- 15.1. Subject to any written warranty SX provides to the Buyer and any right which cannot be excluded by law (Non-Excludable Rights), all warranties, conditions, liabilities or representations (express, implied, statutory or otherwise) as to the quality or fitness of the goods or as to the accuracy of information, advice or other services concerning the goods, are expressly excluded.
- 15.2. SX is not liable to the Buyer for any loss or damage (including consequential loss or damage) the Buyer incurs even if due to SX's negligence.
- 15.3. The Buyer indemnifies SX for all liabilities, losses, damages, costs or expenses suffered or incurred by SX as a result of any of the following:
- SX's compliance with the Buyer's instructions regarding the goods;
 - the Buyer's failure to:
 - provide or display safety information on or relating to the goods;
 - comply with laws relating to the use, sale, marketing, labeling or marking of goods; or
 - detect and bring to SX's attention matters for which SX may become liable, whether for negligence, under legislation or otherwise;
 - any statement the Buyer make about the goods without SX's written approval;
 - the use of goods by the Buyer or a third party;
 - the Buyer's negligence or breach of these terms.
- 15.4. The Buyer agrees that the goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption.
- 15.5. Liquidated damages will not apply to any element of these terms unless specifically provided for in SX's quotation.
- 15.6. SX is not liable to the Buyer for any consequential losses.

16. Storage, handling and freight

- 16.1. SX may charge the Buyer for storage if the Buyer does not collect the goods or provide adequate delivery instructions within 14 days after SX notifies the Buyer that the goods are ready for collection. The Buyer must pay the charges SX specifies when SX asks the Buyer. Any goods SX stores on the Buyer's behalf are at the Buyer's risk.
- 16.2. In storing and handling the goods, the Buyer must comply with all applicable laws, especially those relating to health, safety and the environment. When SX gives the Buyer written notice, the Buyer must allow SX to enter premises under the Buyer's control to inspect the storage and handling of the goods.

- 16.3. All pallets (if applicable) supplied with the goods remain SX's property and the Buyer must return them to SX at the Buyer's expense in good and clean condition. If the pallets are not returned to SX within 30 days of delivery, SX may charge the Buyer the GST inclusive cost of replacing the pallets.

- 16.4. The buyer agrees to be bound by the terms and conditions of the shipping, ports and road transport companies, Buyer may request these at anytime and will be provided by SX.

17. Disputes.

- 17.1. Any dispute arising under these terms must be resolved by the parties first attempting to resolve the matter by mediation. If the parties are unable to resolve the dispute by mediation, then either the Buyer or SX is at liberty to litigate the matter or by agreement, arbitrate the dispute.
- 17.2. If the parties elect to arbitrate the dispute, then they must agree an arbitrator. Failing any agreement, an arbitrator must be appointed by the President of the State Chapter of the Institute of Arbitrators of Australia.

18. Confidential information, specifications and drawings and non-circumvent

- 18.1. 19.1 Any documents disclosed by SX to the Buyer and which are marked or are to be treated as confidential by the Buyer will not be disclosed by the Buyer to any third party without SX's written consent.
- 18.2. SX retains all copyright and intellectual property rights in all materials SX uses or provides to the Buyer relating to the performance of the installation works.
- 18.3. If the Buyer provides SX with any drawings or other material or documents then the Buyer warrants that the Buyer is entitled to use those documents and indemnifies and holds SX harmless from any claims that may be brought against SX in relation to them.
- 18.4. The buyer or any of its related companies is bound by non-circumvent, meaning that the buyer has no rights to make contact, direct or negotiate with any manufacturer, supplier, service provider that SX introduces directly or indirectly, without SX written consent.

19. Assigning and Subcontracting

- 19.1. SX may subcontract all or part of SX's obligations under these terms.
- 19.2. The Buyer may not assign the benefit of these terms without SX's previous written consent.

20. Variation

- 20.1. SX is entitled to vary these terms at any time by giving the Buyer written notice

21. Waiver

- 21.1. Even if SX does not insist on strict performance of these terms, SX is not taken to have waived SX's right to later require strict performance. Even if SX provides an express waiver, this is not to be taken as a waiver of a subsequent breach of a term or condition.

22. Notices

Notices under these terms must be in writing. A notice must be delivered personally or sent by facsimile transmission or post to the other person at their last known address.

23. Severability

If any of these terms and conditions is invalid or unenforceable in any jurisdiction, they are, if possible, to be read down so as to be valid and enforceable. The read down provision will only apply in the relevant jurisdiction. If the provision cannot be read down, and it can be severed to the extent of the invalidity or unenforceability, it is to be severed. The rest of the provisions, and the validity or enforceability of the affected provision in any other jurisdiction, will not be affected.

24. Governing law and jurisdiction

These terms and conditions are governed by the law in force in the State of Western Australia. SX and the Buyer both submit to the non-exclusive jurisdiction of the courts of Western Australia and any courts which may hear appeals from those courts