

## **General Terms and Conditions of Sale and Delivery of Frauscher Sensor Technology Australia Pty Ltd ABN: 20 604 325 028**

### **1. Scope**

1.1. These General Terms and Conditions of Sale and Delivery (“GTC”) are an integral element of all transactions between the customer and Frauscher Sensor Technology Australia Pty Ltd, hereinafter referred to as “Frauscher” pertaining to the sales and delivery of goods or the provision of other services by Frauscher (“Customer Contracts”). These GTC shall apply as from such time as the customer receives our order confirmation, but in any event no later than at such time as the customer accepts the delivery or the service, and are deemed agreed to cover all present and future Customer Contracts, even where, in respect of future Customer Contracts, no express reference to these GTC is made either at the time of order confirmation or of responding to a customer query or at the time of delivery of the goods or services. No signature by the customer on these GTC is required.

1.2. General terms and conditions of business or standard forms of the customer shall in no circumstances be deemed to constitute any element of the Customer Contracts, irrespective of whether they contain terms deviating from or supplementing these GTC or not. It shall not be deemed any acknowledgment of customer terms and conditions if we receive the customer’s general terms and conditions of business or standard forms (in whatever form) without objecting to them, nor shall our performance of the delivery

of goods or services be deemed any acceptance of such customer terms.

1.3. Contract terms or other contractual provisions on the part of the customer departing from these GTC shall only apply if and to the extent that Frauscher has expressly acknowledged them in writing with respect to any individual transaction and they shall only be deemed applicable to the transaction for which Frauscher has acknowledged the contract terms or other contractual provisions of the customer in such form. Contract terms departing from these GTC may, in particular, be contained in offers by Frauscher, general agreements with the customer and order confirmations by Frauscher.

1.4. In respect of contract terms with regard to a Customer Contract, the following priority shall apply as between order confirmation/offers by Frauscher, general contracts between Frauscher and the Customer and these GTC (including general terms and conditions of purchase and the like):

- 1st priority: Order confirmation by Frauscher/Offer by Frauscher;
- 2nd priority: General contracts between Frauscher and the Customer (such as framework agreements and cooperation agreements);
- 3rd priority: GTC (including general terms and conditions of purchase and the like)

Where contract terms in the above-referenced documents are in conflict, the terms of the document which is ranked

higher in priority shall prevail (thus, for example, terms in order confirmations and offers by Frauscher shall prevail over the terms of general contracts between Frauscher and the Customer). Terms in documents of lower priority which supplement, i.e. do not conflict with, other documents, shall be deemed applicable to documents of higher ranking, although even when applying such supplemental terms the contract term of the higher-ranking document shall in each case take precedence (thus, for example, in the case of order confirmations, supplemental terms of general contracts between Frauscher and the Customer shall be deemed to rank higher in priority and prevail over supplemental terms in the GTC).

## **2. Offer, formation of contract, written form requirement**

2.1. Frauscher's offers shall at all times be deemed subject to change and without obligation even where Frauscher specifies prices, deadlines or furnishes other specifications in such offers. This shall apply irrespective of whether an offer of this kind is made on the basis of an enquiry by a customer or without any such enquiry. Frauscher shall not be deemed bound by contract until such time as it forwards its written confirmation of order pursuant to section 2.3.

2.2. Where the customer places an order (in response to notice or similar statement by Frauscher or without any such previous communication), the customer shall be deemed bound by its order until such time as Frauscher confirms or rejects the order, but in any event for a twenty one (21) day period.

2.3. Orders received by Frauscher pursuant to section 2.2 hereof (both initial orders and follow-up orders) shall only be binding on Frauscher at such time as Frauscher sends its written order confirmation. Amendments and addenda to any order accepted by Frauscher shall not be valid unless Frauscher furnishes written confirmation thereof.

2.4. Where Frauscher's order confirmation deviates from the customer's order, the customer shall be deemed to acknowledge the deviation from the original order if the customer fails to object to it within fourteen (14) days of receipt thereof.

2.5. Information contained in catalogues, brochures and the like as well as Frauscher's other verbal or written statements shall only be deemed to govern where Frauscher has expressly confirmed them in its written order confirmation.

## **3. Delivery**

3.1. Where Frauscher's written order confirmation under section 2.3 hereof or other communication under section 2.1 hereof do not contain any details in respect of delivery, the parties are deemed to agree to delivery in accordance with and each party agrees to comply with DAP INCOTERMS 2010.(Fully delivered, door to door within Australia or New Zealand)

3.2. Unless otherwise agreed, Frauscher's obligation to make delivery shall include standard packaging suitable for transport, but it should be noted that packaging for shipment by sea vessel does not constitute standard packaging and Frauscher will only undertake such

packaging upon special agreement and for an extra charge. With respect to the conclusion of the forwarding agreement, DAP INCOTERMS 2010 shall apply. DAP INCOTERMS 2010 shall likewise apply in respect of insurance cover, and the customer shall bear the entirety of the insurance costs in the event that Frauscher enters into transport insurance for transport of the goods. Upon delivery the risk of loss and damage to the goods forwarded, as well as the costs thereof, are deemed to pass to the customer.

3.3. Frauscher is not obliged to give the customer a notice referred to in Section 35(3), Sale of Goods Act 1923 (NSW) (or any equivalent legislation).

3.4. Frauscher is authorised to effect partial delivery and invoice deliveries in instalments.

#### **4. Delivery period, default**

4.1. Unless an agreement has been made by the parties with respect to a specific calendar date, the delivery period shall begin on the latest of the following dates:

- The end of the day on which the order is confirmed;
- The end of the day on which the customer delivers its complete technical specifications to Frauscher (where Frauscher's performance of the order is agreed to be dependent on the customer's delivery of documentation) and final resolution of all technical details of the order;
- The end of the day on which Frauscher receives any down payment or security (letter of credit, bank guarantee, etc.) prior to execution of the works.

4.2. Where amendments to a Customer Contract are subsequently agreed, a new, reasonable delivery period shall be agreed, or the delivery period shall be deemed automatically extended by reasonable time in the absence of any agreement to the contrary. In addition, in the event of a force majeure event (within the meaning of section 4.4) and in the event of a breach of the customer's duty of cooperation or other contract breaches by the customer under the Customer Contract, delivery periods shall be deemed interrupted for the duration of the interrupting event in question, such that no default in delivery shall be deemed to arise. In such cases, Frauscher shall be entitled to set a reasonable grace period and upon the expiry thereof to rescind the Customer Contract. In the event of interruptions due to force majeure, both Frauscher and the customer are entitled to set a reasonable grace period and upon the expiry thereof to rescind the contract if the delivery of the goods is delayed by more than three months as a result of the force majeure event. In any case and without exception, including in these cases, the customer shall not be entitled to assert any claims for damages or other legal claims. The foregoing applies even if the events occur at a point in time at which Frauscher is itself in default.

4.3. Unless an express agreement has been made between the parties with respect to fixed-deadline delivery dates, delivery dates shall be deemed approximate and without obligation. Agreement with respect to a delivery date(s) of performance shall not be deemed to constitute a fixed-term transaction. Frauscher is also entitled to effect deliveries early. Where delivery dates have been con-

firmed by Frauscher, Frauscher is permitted to exceed such delivery dates by up to fourteen (14) business days by furnishing written notification to the customer, without the customer being entitled to derive any consequences of default of any kind whatsoever therefrom. In the event of any failure to meet a delivery date beyond the foregoing (default), the customer shall only be entitled to rescind the contract with respect to the quantity affected by the default if it sets a reasonable grace period of at least four (4) weeks prior thereto. The grace period shall begin upon the date on which Frauscher receives the customer's letter, which the customer shall forward to Frauscher by recorded delivery (Registered Post). With the exception of contract rescission under this section 4.3, any delays in effecting deliveries shall not be deemed to entitle the customer to assert any claims, irrespective of the legal basis thereof.

4.4. "Events of force majeure" shall be deemed to include, in particular, but not be limited to, the following events:

- all impacts stemming from forces of nature such as earthquake, lightning strike, frost, wind storm, flood;
- war, travel warnings of the Government of Australia, the entry into force of statutes or statutory amendments, interventions by public authorities, seizures, disruptions or destruction by means of transport (for which no liability is accepted as a matter of principle), prohibitions on export, import and transit, national and international foreign trade law provisions, embargos and other sanctions, international payment restrictions, breakdowns in the supply of raw materials and energy sources;
- business disruptions, such as through explosion, fire, strikes, sabotage and all

other events which could not have been avoided or could only have been avoided at unreasonable cost or by means which are not commercially reasonable;

- An outbreak of a pandemic disease.

## 5. Duty of acceptance, default of acceptance, passage of risk

5.1. The customer must immediately call for and accept custody of goods Frauscher has notified the customer are ready for shipment (and the customer must identify its freight carrier or other person accepting custody thereof); otherwise Frauscher shall be entitled to store the same in its free discretion at the customer's cost and risk and immediately invoice the customer therefor. The Customer Contract shall thereupon be deemed fully performed on the part of Frauscher. The same shall apply where the parties have agreed that the customer is entitled to issue a call-off order for the goods during a defined period and the customer fails to do so within such period or where the delivery is delayed due to the customer's lack of the necessary space or technical prerequisites.

5.2. The risk of accidental destruction and accidental damage is deemed to pass to the customer at the time of delivery pursuant to the DAP INCOTERMS 2010 which are applicable pursuant hereto, or in cases of default referenced in the DAP INCOTERMS 2010. Where grounds of interruption as set out in section 4.2 are present or if the goods are deemed 'shipped' within the meaning of the 'deemed performance' pursuant to section 5.1, the risk shall pass to the customer at such time as the customer receives Frauscher's notification of its readiness to ship. The foregoing shall also apply where Frauscher organises

and manages the shipment at the customer's request and expense. Where the customer is in default of acceptance, upon expiry to no avail of a grace period of at least two weeks, which Frauscher shall set in writing, the customer shall pay to Frauscher a contractual penalty of 1% of the net order value, irrespective of fault. Frauscher's right to assert a claim for actual damages exceeding the amount of the contractual penalty shall remain unaffected thereby.

5.3. Every shipment of goods shall be deemed to have been delivered in proper condition to the freight forwarder or such other person as the customer has designated. Until proof of the contrary is furnished, any damage to the goods shall be deemed to have occurred during shipping. Irrespective of the INCOTERMS clause agreed by the parties in the particular case, Frauscher shall not bear any liability for any losses whatsoever arising during shipping or as a result of delays during shipping.

5.4. Manuscripts, originals, drafts, sketches, samples, models, films and other documentation or goods provided to Frauscher are deemed to be stored by Frauscher exclusively at the risk of the customer. Insurance of these goods against any risk whatsoever is exclusively the customer's responsibility. Frauscher shall have no liability whatsoever for any damage to or loss of such items except where Frauscher has, by its gross negligence, occasioned the damage or loss of the item.

## 6. Prices

6.1. Frauscher's prices are quoted in the currency set out in its offer, and absent any such specific reference, they are

deemed quoted in Australian Dollars (AUD). Where offers are made in currencies other than the AUD, Frauscher reserves the right to adjust the prices to take account of currency fluctuations relative to the AUD occurring on or before the date of delivery (in the event of a default of payment by the customer: on or before the date of payment).

6.2. Frauscher shall invoice the customer based on its prices valid on the date of delivery, plus GST (at the statutory rate as applicable from time to time). The Customer is liable for all taxes (including GST), duties, levies and other government fees and charges in relation to the Goods. Unless specified otherwise, prices quoted do not include such taxes (including GST), duties, etc. Frauscher's prices as indicated are quoted fully delivered at place., the customer shall bear the cost any packaging exceeding standard packaging (such as for sea freight). Any cash discounts, rebates, etc. granted to the customer are calculated based on Frauscher's sales prices (net of GST).

6.3. The agreed prices are based on Frauscher's production costs as of the date of its written confirmation of order. In the event of a change of the prices of materials and energy, wages, freight charges, customs duties, taxes and other costs with an impact on price, Frauscher reserves the right to make an adjustment to its cost structure at the time of delivery. Where Frauscher enters into a contract without specifying the price, the price applicable to the goods delivered in effect on the date of delivery or production of the goods for delivery shall be charged.

6.4. Supplemental costs occasioned by subsequent change orders issued by the

customer (provided that Frauscher acceded to the change order request) shall be borne by the customer. In addition, Frauscher shall be entitled to invoice the customer for additional costs due to any delay for which Frauscher bears no fault, in particular for delays attributable to resolving issues of the technical or legal prerequisites to delivery, warehousing costs due to a breach of the customer's duty of acceptance, or costs of Frauscher arising due to overtime, night or weekend work requested by the customer.

6.5. All payments received from the customer must be applied in accordance with section 14(6)(c) of the PPSA

6.6. If, and to the extent, any supply of the Goods under the Contract is a taxable supply within the meaning of the GST Law, the price for the Goods will be increased to include GST payable by Frauscher in respect of the supply. All rebates, discounts or other reductions in price will be calculated on the GST exclusive price. The parties agree that:

- a. the parties must be registered persons within the meaning of the GST Law;
- b. Frauscher must provide tax invoices and if applicable adjustment notes to the Customer in the form prescribed by or for the purposes of the GST Law; and
- c. costs required to be reimbursed or indemnified excludes any amount that represents GST for which an input tax credit within the meaning of the GST Law can be claimed.

## **7. Payment, default of payment, set-off**

7.1. Absent any agreement to the contrary in the order confirmation or the delivery

contract, the customer shall pay the amounts of invoices (including with respect to partial deliveries and deliveries made under addenda) to Frauscher within thirty 30 calendar days of the date of the invoice; any bank charges or other charges in connection with bank transfers, documentary collections or documentary letters of credit shall be charged to the customer. The payment date shall be deemed the date of Frauscher's receipt of the funds or the date on which the funds are received at Frauscher's payment office. Any rebates, bonuses and cash discounts shall be contingent on the customer's complete and timely payment.

7.2. Frauscher reserves the right to require advance payment for delivery of the goods. No payments are accepted by bill of exchange or cheque, and shall not be deemed to satisfy the customer's payment obligation. Any rebates, bonuses and cash discounts shall be contingent on the customer's complete and timely payment.

7.3. The customer shall only be entitled to set off any claims it may have against Frauscher against Frauscher's claim for the purchase price if and to the extent that the customer's counterclaim is undisputed or has been determined by res judicata court judgment. The customer shall only have a right of reservation based on claims arising out of the same contractual relationship.

7.4. Where a complete or partial default of payment of an invoice which is due and payable on the part of the customer occurs or where insolvency proceedings are opened over the customer's assets, Frauscher shall be entitled to immedi-

ately accelerate the entirety of its outstanding purchase price claims, including such claims as may arise from other contractual relationships or other orders, notwithstanding potential later due date or value date (acceleration), or to demand the furnishing of sufficient security by the customer. In addition, Frauscher shall be entitled to defer performance of its obligations until such time as the outstanding payment (or other contractual performance) has been made.

7.5. If a Party fails to make any payment due to the other under this Agreement by the due date for payment, then, without limiting the other Party's remedies, the defaulting Party shall pay interest on the overdue amount at the rate of 4% a year above the published Australian base rate from time to time. This interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting Party shall pay the interest together with the overdue amount. In relation to payments disputed in good faith, interest under this clause 7.5 is payable only after the dispute is resolved, on sums found or agreed to be due, from the due date until payment

7.6. Where no payment is made within a reasonable grace period from the date on which default arises and Frauscher has set a deadline for payment and threatened to rescind the contract, Frauscher shall be entitled (notwithstanding its rights under section 8 of these GTC – Reservation of title) to rescind the Customer Contract.

7.7. If the Customer fails to pay by the due date any amount owing to Frauscher, Frauscher may (without prejudice to any of its other rights) recover and resell any

of the Goods in which property has not passed to the Customer. In addition to any rights Frauscher may have under Chapter 4 of the PPSA, Frauscher may, without notice, enter any premises where it expects the Goods may be located and remove them without committing a trespass, and the customer authorises Frauscher to enter onto the premises where the Goods are kept to take possession of the Goods for that purpose at any time. The customer also indemnifies Frauscher from and against all Loss suffered and or incurred by Frauscher as a result of exercising its rights under this clause 7. If there is any inconsistency between Frauscher's rights under this clause 7 and its rights under Chapter 4 of the PPSA, this clause 7 prevails.

7.8. The Customer acknowledges and warrants that Frauscher has a security interest (for the purposes of the PPSA) in the Goods and any proceeds until title passes to the Customer in accordance with this clause 7. The Customer must do anything reasonably required by Frauscher to enable Frauscher to register its security interest with the priority Frauscher requires and to maintain that registration.

7.9. The security interest arising under this clause 7 attaches to the Goods when the Customer obtains possession of the Goods and the parties confirm that they have not agreed that any security interest arising under this clause 7 attaches at any later time.

7.10. On export transactions, the customer shall be obliged to return the originals of all export and customs documents to Frauscher; the customer shall otherwise

be obliged to pay any customs duties or other charges which may be levied.

- 7.11. Prohibitions on assignment of receivables the customer may issue shall not apply to Frauscher.

## 8. Reservation of title

8.1. Every delivery of goods made by Frauscher shall remain Frauscher's property until such time as the entire amount of the invoice (including ancillary charges such as interest and costs) has been fully paid. The customer is obliged to arrange for separate safekeeping and proper storage of goods subject to Frauscher's reservation of title and to insure such goods in line with their value.

8.2. The customer is not authorised to treat or process the reservation of title goods; the customer shall only be permitted to pledge or transfer ownership thereof by way of security with Frauscher's prior written consent. Where the reservation of title goods are processed, melded or comingled with other materials, Frauscher shall acquire co-ownership in the new item of goods created thereby pro rata in proportion to the value of the goods supplied by Frauscher relative to the other material. In all such cases, the customer is deemed the custodian of the property and obliged to cooperate in all measures necessary or useful in order to protect Frauscher's property.

8.3. Throughout the period of Frauscher's reservation of title, the customer shall notify Frauscher without delay of any charges and other interventions by third parties relative to the reservation of title goods and of any damage or loss with re-

spect to the same, and shall bear/reimburse Frauscher for all costs arising in connection with the enforcement of Frauscher's property rights. The customer shall be liable to Frauscher for all losses arising out of its failure to give notice or for any belated notice.

8.4. The customer is deemed to assign, now and in advance, all receivables arising from the sale of the reservation of title goods to Frauscher. Upon Frauscher's request, the customer shall be obliged to disclose to Frauscher the name and address of its end customers as well as the existence and amount of any receivables arising from such sale. The customer shall furthermore be obliged to note this assignment in its books and to furnish documentary evidence thereof to Frauscher upon request. Frauscher is authorised to disclose such assignments to the respective third-party debtors at any time. Until revocation by Frauscher, the customer shall be deemed authorised to collect receivables it has assigned to Frauscher in its own name, but for Frauscher's account, without this being deemed to modify in any way Frauscher's exclusive entitlement to the receivable. The customer is not entitled to assign receivables arising out of its resale of reservation of title goods to third parties.

8.5. Frauscher's assertion of its reservation of title shall not require any rescission, shall not be deemed the equivalent of a rescission of the contract, and shall not be deemed to relieve the customer of its obligations. The customer shall only have a claim to a credit of the proceeds of sale (by sale on the open market) of the reservation of title goods. Any and all



costs incurred by Frauscher by repossession of the goods (shipping costs etc.) shall be charged to the customer.

## 9. Warranty

9.1. Within the limitation periods set out in section 9.2 hereof, pursuant to the terms set out hereinafter, Frauscher shall be obliged to remediate and rectify all such defects as impair the functionality of the goods, which were already present at the time of delivery and were due to a defect in manufacturing or design by Frauscher or of the material furnished by Frauscher.

9.2. The customer shall inspect the goods received by it at once to verify that they are free of defects. Any defects of which the customer has not given immediate notice to Frauscher or of which the customer has not given notice within seven (7) days of the arrival of the goods at their destination, at the latest, in writing and precisely indicating the defect, shall be deemed approved. In such cases, the customer's right to assert any claims for statutory warranty and/or compensatory damages and its right to challenge the transaction for mistake based on defects shall be deemed forfeited. Excepted herefrom are defects which could not have been discovered within that seven (7) day period, despite careful scrutiny by the customer. Such defects shall be deemed approved by the customer if the customer fails to give notice thereof in the manner described above within seven (7) days of discovery thereof. The customer's warranty claim shall only arise where the customer has given written notice to Frauscher without delay of the defect which has appeared and has furnished a detailed description thereof. To the extent the loss arising is deemed under DAP INCOTERMS 2010 to fall within

the sphere of risk to be borne by Frauscher, the customer shall be obliged to assert any claims Frauscher may have vis-à-vis the freight forwarder, shipper or transport insurance provider without delay, but within seven (7) days of the arrival of the goods at their destination, at the latest, or in the event it learns thereof at a later point in time, then without delay upon learning thereof. Defects as to a portion of the goods delivered shall not entitle the customer to object to the entire delivery.

9.3. Subject to section 9.4 hereof, supplemental performance shall, as a general rule, be rendered at the place of performance as defined in section 3.1 hereof. Thus, in the case of a timely complaint pursuant to section 9.1 hereof, the customer shall consult with Frauscher and return the goods to Frauscher for its inspection of the asserted defects.

9.4. Where the goods or services have been subsequently relocated to another location, then, at Frauscher's option, supplemental performance may also be rendered at such other location. Frauscher shall bear expenses exceeding the costs of supplemental performance at the place of performance where it renders supplemental performance at a location other than the place of performance (additional costs), except where the supplemental performance at another location is rendered at the customer's express request (who in such case shall bear the costs thereof).

9.5. The customer may not derive any claims or legal consequences as a result of Frauscher's acceptance of goods returned to it. Likewise, Frauscher's inspection of the defect shall not give rise to any claims on the part of the customer

or other legal consequences. In the event of an unjustified complaint for defects, the customer shall, in any event, bear the costs of shipping incurred for shipping/returning the goods as well as any other expenses which may arise.

9.6. In the event of well-founded complaints for defects within the warranty period, Frauscher shall be entitled to avoid any claim of the customer for abatement of the purchase price by remediating the defect or supplying replacement goods. The customer shall have no warranty claims exceeding the foregoing; in particular, it shall have no claims to abatement of the price, rescission or cancellation. The customer shall not be authorised to rectify the defect itself or to cause a third party it has engaged to do so. Following the customer's discovery of a defect, the customer is not permitted to effect any further disposition over the goods without Frauscher's consent; where the customer nevertheless does so, it is deemed to waive any warranty claims and claims for damages it may have against Frauscher.

9.7. Where Frauscher rectifies defects not subject to warranty or performs other services or customer service work, such work shall be charged in accordance with Frauscher's valid price schedule or on the basis of time and expense incurred.

9.8. The customer shall be deemed to have no claims for warranty or damages in cases of defects caused by over-stress of the goods, negligent or improper handling and installation, poor maintenance, repairs performed without Frauscher's written consent, failure to comply with Frauscher's operating instructions and other instructions as well as use of the product beyond the specifications agreed

with Frauscher. Frauscher shall not bear liability for damage to the goods resulting from actions by third parties or from effects of chemical, electrical or mechanical sources which are not envisaged by the Customer Contract. Goods which are subject to natural wear-and-tear shall not be deemed covered by the warranty with respect to such wear-and-tear.

9.9. Frauscher's warranty obligation shall be deemed to immediately lapse where any modifications or repairs to the goods are made without Frauscher's consent. The warranty period shall not be deemed extended by the performance of work which is subject to warranty.

9.10. Assertion of a defect shall not relieve the customer of its duty to make payment. In addition, the customer's assertion of a defect shall not entitle it to reject further deliveries under the Customer Contract with Frauscher in question, or under any other Customer Contract with Frauscher.

10. The standard product warranty is twelve (12) months and the customer has the option to purchase an extended warranty for up to an additional forty-eight (48) months. Such a warranty extension may be quoted as per the customer request and shall be charged separately.

## 11. Liability

11.1. Frauscher's liability is, as a general rule, limited to the losses for damage to the goods delivered. Frauscher shall bear no liability for any compensatory damages exceeding the foregoing, in particular, it shall bear no liability for consequential damages (such as injuries to persons or to plants/facilities (e.g. railway facilities) as a result of interruptions of

operations), to the extent such damages include or relate to lost profits, pure pecuniary damages or third-party damages. Where Frauscher's warranty obligation is inapplicable based on section 9 hereof, then in such case, Frauscher shall likewise have no duty to pay compensatory damages. The foregoing shall apply even where the customer has downstream liability beyond the foregoing to its customer, other counterparties or third parties.

11.2. Any and all liability for damages on the part of Frauscher under this contract, such as for consequential damages for defects, damages for default of delivery, technical advice, etc. shall be deemed limited to liability for intentional acts and omissions and gross negligence. Frauscher's liability shall furthermore be limited (to the extent permitted by law) to such losses as Frauscher could have foreseen or would have been able to foresee as a potential consequence, but in any event shall be limited (except in cases of intentional acts or omissions) to the net invoice amount of the goods affected by the defect or default.

11.3. The limitation of liability envisaged under section 10.1 hereof shall not be deemed to encompass liability for defective products which is not derogable and which is independent of fault, where as a result of such defects any person is injured, killed or suffers injury to his or her health.

## 12. Product liability

12.1. In the event the customer resells products or portions of products from Frauscher, the customer shall be obliged to impose this waiver on its end customers to the full extent. The customer shall

also impose on its end customer an obligation to pass on such waiver with respect to all other subsequent customers. This duty to pass on the foregoing waiver shall apply even if the customer or a downstream customer of Frauscher's products uses the products to produce other products and places such other products on the market. Agreements imposing a waiver on other parties shall be drafted such that Frauscher shall acquire a direct right thereunder to assert a defence of exclusion of recourse independently against the party entitled to assert recourse in the event such party asserts a claim against Frauscher.

12.2. Frauscher does not warrant that the products it has delivered to the customer free of defects will be 'free of defects' when used as parts of products produced by the customer or its downstream customers. Frauscher shall thus bear no liability if its products, which were free of defects when placed on the market, are deemed defective as a consequence of incorporation or installation into the systems or products of the customer or of the customer's downstream customers. Frauscher shall likewise bear no liability if the products placed by it on the market are deemed defective because they are produced, stored or supplied pursuant to the customer's direction (e.g. manufacturing details, specifications, plans, models or directions regarding storage or shipping).

12.3. When using or reselling the product, the customer is obliged to comply with Frauscher's user instructions, technical customer documentation (including safety-related terms of use (STU rules)), warnings and other product advice and to refrain from any and all improper manipulation of the product (e.g. disassembly,

modification, heating, improper storage or shipping or any other negative impairment to product safety). Frauscher shall not be expected to anticipate any such improper manipulation or unintended use of Frauscher's products by the customer. The customer shall pass on, in full, Frauscher's product advice, warnings and other product information to its downstream customers or to such persons it permits to use the product. In the event that the customer resells products of Frauscher, the customer shall be obliged to impose the obligations agreed in this section in full on its downstream customer and also to pass on such obligation to all further downstream customers. This duty to pass on the foregoing shall apply even if the customer or a downstream customer of Frauscher's products uses the products to produce other products and places such other products on the market.

12.4. In the event that the customer learns of facts, in any way whatsoever, that cause Frauscher's products to appear to be defective, the customer shall notify Frauscher thereof without delay.

12.5. Where the customer produces new products from Frauscher's products, the customer shall ensure that the product is labelled such that it is clear to any person that neither Frauscher nor Frauscher's sub-Frauscher (component Frauscher) is the manufacturer thereof. This duty shall apply in particular to labelling on products and, where as a result of the characteristics of the product this is not possible, to labelling on the packaging of products. Rather, the customer labelling on products made from goods produced by Frauscher shall be such that it is clear who the manufacturer of the customer's product is.

12.6. Where the customer breaches any obligation set out in these GTC, in particular, where it breaches a duty to impose an obligation on a third party, it shall indemnify and hold Frauscher harmless against all claims of third parties, to the extent such claims would not arise if such obligation were complied with.

12.7. In the event of any defects of title as well as any assertion of a claim against the customer or directly against Frauscher, the customer shall, in addition, indemnify and hold Frauscher harmless, irrespective of fault. In such case, the customer shall furthermore assume all costs arising therefrom, in particular the costs of any necessary enforcement of rights, and hereby undertakes to furnish Frauscher with all documents expedient for this purpose. The parties shall thus also immediately endeavour to enter into a legal defence agreement.

### **13. Recalls**

13.1. Where indications appear that a recall campaign for Frauscher products may be required resulting from defectiveness of the contract products, the customer shall furnish comments thereon without delay and hereby undertakes to Frauscher that it shall furnish all such information and documents as are necessary and expedient and shall inform Frauscher at all times with respect to any safety risks. The customer hereby expressly undertakes to carry out any recall campaigns which may become necessary. In the case of the customer's resale of Frauscher's products or portions thereof, the customer shall impose these duties of information and duties to conduct recall campaigns in their entirety on its downstream customers.

13.2. In the event that Frauscher should bear an obligation to conduct a recall campaign, the customer shall indemnify and hold Frauscher harmless with respect to all expenses arising out of or on the basis of a recall campaign of goods or products within which (Frauscher's) contract products have been integrated. To the extent that the customer is obliged to undertake or carries out a recall, the customer shall in any event indemnify and hold Frauscher harmless.

#### **14. Rescission of Customer Contract**

14.1. The customer and Frauscher are both authorised to rescind the Customer Contract (purchase agreement) in such cases as are set out in these GTC and as are provided by law. In addition to the cases already referenced in these GTC, Frauscher shall furthermore be entitled to rescind the contract without incurring liability if

- the delivery of the goods, the commencement or continuation of its contractual performance is rendered impossible or subject to further delay, despite a grace period having been set, due to grounds for which the customer bears responsibility;
- in the event that insolvency proceedings are commenced over the assets of the customer or dismissed for a lack of assets covering costs to the extent that rescission is permitted pursuant to the applicable insolvency rules.

14.2. Rescission by Frauscher may also be declared with respect to an as-yet outstanding portion of goods or services to be supplied based on one of the grounds pursuant to section 13.1 hereof.

14.3. Notwithstanding any possible claims for compensatory damages, in the event of rescission, Frauscher shall have a claim to payment of such goods or services as it has rendered previously, as well as for any preparatory work it has undertaken in respect of the Customer Contract.

14.4. The customer shall have no right to assert any claims for *laesio enormis*, mistake or failure of consideration or change of consideration.

#### **15. Intellectual property**

15.1. Frauscher or its respective licensors shall retain ownership of any and all intellectual property (including, in particular, patent rights, know-how, trademarks and other trademark-related rights, industrial design rights and utility model rights, copyrights and other intellectual property rights) to the products covered by any delivery contract as well as to improvements and developments thereto, irrespective of type, and irrespective of whether such rights have been registered or not.

15.2. The customer is prohibited from itself copying or having any third party copy the products covered by any delivery contract, or to undertake reverse engineering with respect to the products for such purposes. In this context, it is irrelevant whether the products covered by a delivery contract are subject to intellectual property rights or whether such intellectual property rights do not exist or no longer exist.

15.3. Where a third party asserts a claim against the customer for an infringement of intellectual property by products covered by a delivery contract, the customer

shall notify Frauscher thereof without delay in writing, attaching all information and documents it has in this regard. In such case, Frauscher shall be entitled, following written notification to the customer, to render decisions as to the measures needed to defend its rights vis-à-vis the third party, at Frauscher's own cost and expense, irrespective of whether such measures are extrajudicial or litigation-oriented, and to issue the necessary instructions for this purpose to the customer.

15.4. The customer shall notify Frauscher of all infringements of Frauscher's intellectual property which have come to its knowledge in the course of its business operations without delay and attaching all information and documents it has in this regard.

15.5. The customer shall indemnify and hold Frauscher harmless in the event of any claims asserted by third parties due to an infringement of intellectual property rights based on documents, drawings, models and other documentation furnished by the customer to Frauscher.

## **16. Technical advice**

Any and all technical advice provided by Frauscher, either in writing or verbally, shall not be deemed binding on Frauscher, and shall not relieve the customer of its own duty to inspect any delivery of goods for their fitness for their intended use.

## **17. Fair Competition, Trade Control and Compliance**

17.1. The Customer shall observe the rules of fair competition and act towards Frauscher in good faith.

17.2. The Customer shall comply with U.S., EU, and any other applicable economic sanctions and export controls laws, including without limitation, the laws administered or enforced by the U.S. Department of Treasury Office of Foreign Assets Control, the U.S. Department of State, the U.S. Department of Commerce, and the European Union. In the course of fulfilling its obligations and/or providing services under Customer Contracts, the Customer shall provide confirmatory details at the request of Frauscher.

17.3. The Customer undertakes not to directly or indirectly, offer, promise, grant or solicit any undue payments or other advantage in the course of fulfilling its obligations and/or providing services under Customer Contracts. The Customer shall assure that all employees, officials and employees of their private partners shall comply with these provisions.

17.4. The Customer shall indemnify, protect and hold Frauscher, its agents, customers or other Frauschers harmless against any claims, losses, profits, royalties, damages and expenses, including actual attorney fees, which may arise out of any claim of infringement of any nature or unfair competition or otherwise based on any of the above, including any settlement thereof. Frauscher may be represented and actively participate in any suit or proceeding arising out of any such claim and the Customer shall pay all costs of such representation.

## **18. Place of performance, jurisdiction and venue, applicable law**

18.1. The place of performance for all liabilities under this business relationship

shall be 31 Queen Street, Level 19, Melbourne, Victoria 3000, Australia.

18.1 Any dispute, controversy or claim arising out of, relating to or in connection with these GTC or any other contract related hereto, including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the ACICA Arbitration Rules. The seat of arbitration shall be Melbourne, Australia. The language of the arbitration shall be English. The number of arbitrators shall be three.

However, Frauscher shall be entitled at any time, as a claimant, also to have recourse to the ordinary courts, at its option, and to assert claims against the customer.

The contract will be governed by and construed in accordance with the laws in force in the territory of the State of Victoria, Australia. The parties hereby exclude any application of the United Nations CISG. Unless otherwise agreed in writing, for purposes of interpreting the clauses of contract used by the parties, the most recent valid version of INCOTERMS shall apply.

### **19. Confidentiality, data protection**

19.1. The customer hereby undertakes to keep confidential all such information regarding Frauscher or the subject-matter of the contract as comes to its knowledge in connection with the contract, to the extent such information is not generally known or has come to its knowledge in another legal manner. In the event that the customer makes use of a third party to perform its contractual obligations, it shall impose a corresponding contractual duty of confidentiality on such third party.

18.2. Frauscher complies with the General Data Protection Regulation with regard to the customer's personal information.

18.3. These Terms and Conditions should be read alongside, and are in addition to our policies, including our privacy policy and cookies policy which can be found on our website.

18.4. For the purposes of these Terms and Conditions:

**'Data Protection Laws'** means any applicable law relating to the processing of Personal Data, including, but not limited to the Directive 95/46/EC (Data Protection Directive) or the GDPR.

**'GDPR'** means the General Data Protection Regulation (EU) 2016/679.

**'Data Controller'**, 'Personal Data' and 'Processing' shall have the same meaning as in the GDPR.

18.5. Frauscher is a Data Controller of the Personal Data we Process in providing the goods and services to the customer.

18.6. Where the customer supplies Personal Data to Frauscher, so Frauscher can provide goods and services to the customer, and Frauscher Process that Personal Data in the course of providing the goods and services to the customer, Frauscher will comply with its obligations imposed by the Data Protection Laws:

18.7. before or at the time of collecting Personal Data, Frauscher will identify the purposes for which information is being collected;

18.8. Frauscher will only Process Personal Data for the purposes identified;

18.9. Frauscher will respect the customer's rights in relation to the customer's Personal Data; and

18.10. Frauscher will implement technical and organisational measures to ensure

the Customers Personal Data is secure.

## 20. Miscellaneous

20.1. In the event of use and/or resale of Frauscher's goods, the customer shall bear responsibility for compliance with all relevant statutory and regulatory requirements.

20.2. The assignment of the customer's claims against Frauscher shall require Frauscher's express written consent, and in the absence of any such consent, shall be deemed invalid. Frauscher is entitled to assign its rights and duties under the Customer Contract to another Frauscher group company. The customer shall not derive any right of termination in connection with any such assignment.

20.3. No declarations or notices by Frauscher or the customer based on these GTC or on the basis of the Customer Contract, such as complaints of defects and the like, shall be valid unless given in writing in English. Such declarations and notices shall be deemed validly given if made in each case to the address most recently stated to the other party.

20.4. In the event that individual terms of these GTC or any Customer Contract should be or become invalid, unenforceable or illegal in whole or in part, this shall not affect the validity of the remaining terms and the validity of these GTC and of the Customer Contract. The parties shall be deemed to have agreed to replace the invalid, unenforceable or illegal terms by such valid, enforceable and legal terms as come as close as possible to the commercial objectives envisaged by the invalid, unenforceable or illegal terms.

20.5. If Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interest created under this Contract, the Customer agrees that the following provisions of the PPSA will not apply; section 95 (notice of removal of accession) to the extent that it requires the Frauscher to give a notice to the Customer; section 121(4) (enforcement of liquid assets – notice to grantor); section 130 (notice of disposal), to the extent that it requires the Frauscher to give a notice to the Customer; paragraph 132(3)(d) contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); section 143 (reinstatement of security agreement).

20.6. The Frauscher does not need to give the Customer any notice under the PPSA (including a notice of verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded.